Academic Assistance Policy

Contents:

§ 1. Policy

The academic assistance program is for workforce planning and development. It provide*s* a tool for managers and employees to support academic activities that directly relate to the organization's identified knowledge, skills, and behaviors (organizational competencies), and which support the mission, vision, and values of the organization. The academic assistance program **is not** an employee benefit, right or entitlement; it is a management program for workforce development. Denial of participation in the academic assistance program is not grievable,except on grounds of discrimination.

Utilization of the academic assistance program shall be identified, described, and documented in the employee's individual development plan. This provides a measurable link between the employee's increased competency and the agency's workforce planning efforts.

The academic assistance program provides reimbursement of academic costs if funds are available at the agency level, and/or time off the job if the course is available only during working hours.

§ 2. Eligibility

Full-time and part-time (half time or more) permanent, probationary and time-limited employees are eligible for Academic Assistance.

Academic Assistance Policy (cont.)

Probationary employees are eligible after satisfactory performance for a period of not less than six months as determined by management.

Temporary and part-time (less than half time) are not eligible.

§ 3. Selective Service Registration

N.C.G.S. § 143B-421.1 requires those eligible for selective service to be registered in order to be reimbursed academic costs. The federal Selective Service law specifies that males, both US citizens and immigrant aliens residing in the US and its territories, ages 18 through 25, shall register with the Selective Service.

§ 4. Origination of Request

Requests for academic assistance may be initiated by the employee or management. The designation, “management initiated,” can only be determined with the approval of the agency head (at Departmental/University level), or designee.

Employee initiated courses to:

- Maintain/enhance current skills
- Develop new skills/competencies for career development within the agency Management initiated courses to:
- Ensure employees have mandated licensure or certification
- Address a shortage of skilled workers in specific classification*s*
- Develop a pool of employees for workforce planning
- Build specific high priority skills
- Address performance expectations of the employee as specified in the performance management policy of the agency.

Job-related degrees and corresponding non-work related courses within a degree program may be approved at the discretion of management.

§ 5. Academic Sources

Academic courses/degrees from accredited community colleges/colleges/universities via traditional classroom, video-based, distance learning, web-based, e-learning and certain correspondence courses (see Ineligible Sources below) are eligible for approval.

Academic Assistance Policy (cont.)

Academic courses are defined as a course/degree provided by an accredited community college/college/university. The course must provide academic credit (as opposed to CEUs), be listed in the college/university course catalog and charge tuition in the traditional meaning of tuition (as opposed to only registration fees). Accreditation must be via an accrediting agency recognized by the US Department of Education.

Ineligible Sources - Correspondence courses **not** accredited by an accrediting agency recognized by the US Department of Education or the Council for Higher Education Accreditation for academic credit are not eligible under this policy.

§ 6. Approved Courses

Management, when making the determination whether to provide academic assistance to take a specific course, must consider the basic principle: “deemed beneficial to both the agency and the employee.”

Completion of the course should have a direct benefit to the organization. The improved knowledge, skills and abilities gained by the employee should benefit the individual in completion of his/her current and/or potential job duties. Management should consider workforce planning, succession planning and career development in approving employees to receive academic assistance.

Guidelines to consider in course selection are:

- Courses which provide knowledge and skills directly related to maintaining or improving current job skills; and also courses mandated by law or regulation as a job requirement for continued employment.
- Courses directly related to the employee’s current job or a documented workforce need.

When approving courses, management must consider workforce planning in developing employees who demonstrate the ability to perform at a higher level of responsibility. Hard to recruit classifications are areas in which an employee could be approved to take courses outside his/her current classification level to meet future work needs. Examples of this are:

- technicians working on a college degree to fill professional engineering positions or
- health care workers participating in a nursing program, and

Academic Assistance Policy (cont.)

- courses included in an academic program which are necessary to complete a management approved degree program.

Academic assistance shall not be approved for courses where management has determined that neither the course nor degree is of benefit to the agency.

The agency head or designee may approve exceptions to the approved course policy.

Audited Courses - Academic courses which are audited are eligible for academic assistance; however, an employee may be reimbursed for the same course or course equivalent only once. Reimbursement requires a statement written on school letterhead and signed by the instructor that the employee attended at least 85% of the scheduled class meetings during the academic term.

§ 7. Certification/Licensing (Post-Employment)

Incumbent employees who meet minimum educational requirements for employment and for whom certification/licensing is required after employment or is deemed desirable by management and approved by the agency head or designee are eligible for academic assistance under the following conditions:

- Certification/licensing is mandated; or
- Certification/licensing is a policy requirement of the employing agency.

Academic assistance is authorized for certification or licensing only if the certification or license is attained via academic course work.

§ 8. Leave

An approved course should be taken on the employee's own time. If a course can be taken only during working hours, eligible employees must request academic leave prior to the beginning of the course allowing sufficient time for the academic assistance request to be reviewed. A leave of absence with or without pay may be approved in compliance with the Educational Leave Policy located in Section 5 of the State Human Resources Manual.

§ 9. Reimbursement

Academic Costs **-** Eligible employees approved for academic assistance may be reimbursed academic costs charged by the academic source at which the employee is enrolled.

Academic Assistance Policy (cont.)

Academic costs are defined as charges assessed by an academic source to every person enrolling for the course. These charges are required of everyone and are neither negotiable nor discretionary for the individual enrolling in the course. Academic costs include in-state tuition, fees and course/lab fees. Course/lab fees must always be itemized. Reimbursement of course/lab fees may require a written statement from the academic source justifying the fee as a required fee in addition to other fees.

Amount of Reimbursement **-** Eligible employees may be reimbursed academic costs charged by the academic source where enrolled. Agencies/universities may reimburse all academic costs as specified in the paragraph "Academic Costs," or reimburse only tuition and other academic-related fees, but not fees unrelated to registering for a course or a degree program, such as dorm, student union construction, athletic fees, student health service, cultural event fees, etc.

Agencies may with a bona fide business justification, reduce the amount of reimbursement per employee to a set amount less than the tuition and fees and/or limit the number of courses for which any one employee may be reimbursed in an academic term. Agencies/universities choosing to reimburse an amount less than the academic costs specified in the paragraph "Academic Costs" shall make this information available to all employees at the beginning of the fiscal year and at the beginning of each semester, and apply this limitation in a fair and equitable manner to all employees requesting academic assistance in that fiscal year.

Source	Amount
University of North Carolina Institutions and Institutions of the North Carolina Community College System	100% of academic costs for up to 20 credit hours per fiscal year.
All academic institutions other than institutions of The University of North Carolina and institutions of the NC Community College System	Up to the maximum academic cost charged by the UNC institutions for up to 20 credit hours or 32 quarter hours per fiscal year. This amount will be determined by OSHR and published within 10 working days of the adjournment of the General Assembly

Academic Assistance Policy (cont.)

	and the meeting of the UNC Board of Governors to approve fees. Reimbursement of tuition and fees from out-of-state colleges/universities shall not exceed the amount as specified above.

Special Graduate Programs - Graduate professional programs (medicine, veterinary medicine, business, etc.) with unusual course/lab fees, tuition or other fees will be considered on a course-by-course basis. The agency head or his/her designee may approve payment of these academic costs.

Non-reimbursable Expenses **-** Reimbursement shall not be made for:

- Charges specifically related to processing or receiving continuing education units (CEUs)
- Application, examination, and graduation fees
- Transportation costs
- Textbooks and supplies

Other Financial Assistance **-** Financial assistance from any other financial aid program shall not be duplicated under this program. However, the difference, if any, between such aid and the allowable costs under the Academic Assistance program may be reimbursed.

Free Tuition - When employees of an educational institution or any other State agency are granted free tuition and non-negotiable fees, the value of this tuition and non-negotiable fees must be considered as part of the allowable academic costs.

Advisory Note: Tuition waiver programs at institutions of The University of North Carolina are authorized by both state law (N.C.G.S. § 116-143) and governed by IRS regulation (U.S.C. 26, IRS Section 117 (d)(2)). The state academic assistance policy is not applicable to tuition waiver programs.

Tax Status - On January 1, 2013, Congress passed the American Taxpayer Relief Act that permanently extends employer provided education assistance (Section 127 of the Internal Revenue Code). This allows an employee to exclude from income up to $5,250 per year in

Academic Assistance Policy (cont.)

educational assistance at the undergraduate and graduate level.

Requirement for Reimbursement - Management may consider any current disciplinary action for job performance or personal conduct prior to approval of the application for reimbursement.

If funds are available, the applicant shall receive reimbursement of approved academic costs upon submitting evidence of satisfactory completion of a preapproved course. Completion is defined as “Satisfactory,” “Pass,” or a grade of “C” or better for undergraduate courses, and a “B” or better for graduate courses. An “Incomplete” shall not be reimbursed until a final grade is issued.

Requests for reimbursement should be submitted within 30 days of completion of the course or receipt of grade.

Employee Transfers and Separations - If an employee transfers to another State agency, and subsequently completes an approved course, the employee should submit a request for reimbursement to the employing agency. The employing agency is responsible for processing the request per the provisions of this policy, and providing reimbursement if funds are available.

Employees who separate from State service, except by reduction in force are not eligible for reimbursement.

§ 10. Thesis/Dissertation Research Courses

Job-related thesis/dissertation research courses at the masters/doctoral level are restricted as follows:

- All required written examinations for the degree shall be successfully completed before the course is approved.
- A maximum of 15 hours leave may be approved for each academic credit hour. All leave hours shall be used during the academic term and may not be accumulated.
- A maximum total of 9 academic credit hours are allowed for any one employee.

§ 11. Courses Taken at Agency Request

Because of specific high priority skill needs of the agency, employees may be requested by management to take specific courses or degree programs. Under these circumstances, the following applies:

Academic Assistance Policy (cont.)

- All limitations under the provisions of this policy are waived. Employees are still responsible for requirements for withholding taxes and FICA.
- All expenses to the individual should be reimbursed related to acquiring the necessary course or degree, to include: travel costs; examinations and administrative fees; textbooks and other course materials. (Any books or materials paid for by the agency become the property of the agency.)

If courses taken at agency request exceed the credit hour per fiscal year limitations of the academic assistance program, then the situation shall be administered under the policy provisions for Extended Academic Leave.

The designation, "At Agency Request," can only be determined with the approval of the agency head (at Departmental/University level), or his/her designee.

Courses specified as part of an employee's performance improvement plan or individual development plan are not considered to be at agency request unless approved by the department head or designee.

§ 12. Administration Responsibility

Each State agency is delegated responsibility for, and authority to administer the program within the provisions of this policy in a fair, consistent and equitable manner.

The agency should designate an agency coordinator to assist with the delegation and consistent implementation of this policy throughout the agency.

State Equal Employment Opportunity policies and procedures are applicable.

§ 13. Procedures

To receive academic assistance, an employee shall:

- Complete the application (PD-136 or agency equivalent) and forward it to the immediate supervisor
- Submit the form prior to enrollment or in accordance with agency schedules to allow time for review, approval and notification to the employee. Agency heads, or a designee, may approve an application received after class begins under the following circumstances.
- Funding for the academic assistance program was delayed and enrolling in the class was contingent upon the program's approval.

Academic Assistance Policy (cont.)

- Employee was asked by management to enroll in the class after its inception.
- An administration error was made by the educational institution or the agency.
- There was an unforeseen, unavoidable major crisis.
- Provide written notice to the agency as to the reason an application is being submitted after a class begins. The written notice will become part of the employee's academic assistance file.

  The application must include:
- The course title(s), institution and location, class schedule, and whether the course is for academic credit, audit or certification/licensing.
- A description of the course(s) and how the course(s) meets the criteria under the approved courses section of this policy.
- The amount of academic cost reimbursement, specifying tuition and/or fees, and any course/lab fees requested.
- A specification of requested time off from work for academic leave including travel time.
- If time off from work is requested, a statement demonstrating unavailability of the course except during work hours.

§ 14. Approval of Application

Employees applying for academic assistance must receive a written response from management regarding approval/disapproval of academic assistance requests, which notes any changes in the application or conditions of approval. The response must also indicate whether reimbursement for the course is subject to withholding taxes or budgetary restraints. Management should consider overall job performance, including active documented coaching, performance improvement plans, letters or any other current disciplinary action prior to approval of the application.

§ 15. Maintaining Records

Each agency is responsible for retaining records, on a fiscal year basis, of academic assistance activity. This information shall be reported annually to the Office of State Human Resources upon request and shall include the following:

- Number employees participating in the program,

Academic Assistance Policy (cont.)

- Amount (tuition and fees) reimbursed,
- Number employees granted educational leave,
- Number of educational leave hours granted with pay and without pay,
- Number employees taking courses at agency's request,
- Number employees granted extended education leave,
- Number of extended educational leave hours granted with pay and without pay,
- Number of employees taking courses for mandated/required certification/licensing

§ 16. History

Date	Version
September 13, 1974	• Changed to allow requests to be submitted through supervisory channels and approved by the Agency Head; not requiring approval by the Office of State Personnel. • Old policy required eligibility to be on the basis of family income and number of dependents; changed to provide that employee is eligible for tuition refund regardless of income and dependents. • Changed reimbursement from $50 per academic term to $80. • Old policy required tuition refund to be approved by OSP; changed to allow agency personnel officer to approve.
December 1, 1978	• Revised – each agency may establish their policy. • Maximum assistance allowed per employee of not more than 1 course per term and maximum reimbursement of $80 per course with a maximum of $320 per year. No reimbursement for books and supplies.
July 1, 1985	• Revised to provide assistance with courses directly related to present job or field of work and changes in reimbursement.
August 1, 1995	• Changed the terminology to "permanent, probationary, trainee appointment" rather than "permanent, probationary, trainee employment." In addition, "time-limited" appointment has been spelled out in the appropriate policies, whereas, in the past, this type of appointment was considered to be a type of "permanent" appointment.

Academic Assistance Policy (cont.)

December 1, 1995	• Revised to include new IRS regulations.
January 1, 2003	Exception Case No. 02-07 Name changed to Academic Assistance and Revised to: • Change name from Educational Assistance Program to reflect its focus upon programs offered by accredited academic sources. • Include specific guidance on reimbursable expenses, extended leave situations, and policy implementation strategies. • Address taxability of reimbursements and selective service registration for academic assistance recipients.
October 6, 2016	• Removed detailed information about academic leave to the Educational Leave Policy • Changed probationary employees' eligibility to participate in the program from "not less than three months" to "not less than six months" to agree with the NCVIP probationary period. • Removed trainee and intermittent employees from the Eligibility Section. • Updated Tax Status section from the Economic Growth and Tax Relief Reconciliation Act of 2001 to the American Taxpayer Relief Act of 2013. • Rescinded the authority of each agency being able to establish their own policy. • Outlined circumstances under which the AAP application can be accepted and approved after a class begins. • Added two additional data gathering categories for the AAP year-end report: (1) number of educational leave hours granted with pay and without pay, and (2) number of extended educational leave hours granted with pay and without pay.

Academic Assistance Policy (cont.)

June 4, 2020	• Remove “improvement plan” on Page 2. Performance Improvement Plans (PIPs) are no longer a part of performance management policy. • Replace “improvement plan” reference on Page 2 with “policy” to be consistent with language in performance management policy.

Acquired Immune Deficiency Syndrome (AIDS) In the Workplace Policy (See Sec. 8)

Contents:

§ 1. Purpose

North Carolina State government acknowledges its obligation as an employer to provide a safe and healthful work environment for all of its employees. Furthermore, the State recognizes the employment-related rights and concerns of employees who, as part of their job duties, may be exposed to or who may have HIV infection.

§ 2. Policy

The State shall provide work practices, and procedures to ensure that employees who are exposed to or have HIV infection are provided with confidential, fair and equal treatment. This policy outlines the rights and responsibilities of supervisors and employees regarding HIV infection in a work environment.

§ 3. Anti-Discrimination

It is the State's policy not to discriminate against any applicant or employee who has or is suspected of having AIDS or HIV infection. The State recognizes that an employee with AIDS or HIV infection may wish to continue working. As long as the employee is able to satisfactorily perform the duties of the job [G.S. 168A-3(9), 130A-148C(i)] and there is no medical evidence indicating that the employee's condition is a health threat to other employees, co-workers or the public, an employee shall not be denied continued employment nor shall an applicant be denied employment solely because of a medical condition.

Acquired Immune Deficiency Syndrome (AIDS) In the Workplace Policy (cont.)

§ 4. **Testing and Examination**

Medical tests and examinations to determine the presence of HIV or HIV associated conditions are prohibited except as authorized by State and federal law or required by the rules of the Commission for Health Services. An employee who suspects that they have had a nonsexual blood or body fluid exposure to the HIV virus while on the job may voluntarily elect to be tested for the HIV infection, provided that the suspected exposure poses a significant risk of transmission of HIV as defined in the Rules of the Commission for Health Services. The cost of tests for the exposed employee shall be borne by the employer, if requested by the employee. Some employees may prefer to pay for their own test through a personal or family physician or use the free testing of a Public Health Department.

§ 5. **Confidentiality**

Confidentiality shall be strictly maintained by the agency for any employee with HIV or HIV associated conditions as required by existing confidentiality rules and laws. Any current confidentiality policies that are in force shall be updated by the agency to include the HIV policy.

§ 6. **Prevention of Occupational Exposure**

Basic programmatic requirements and guidelines for the control of potential exposure to bloodborne pathogens including HIV virus are delineated in the Employees Workplace Requirements for Safety and Health Policy in the State Human Resources Manual and in the State Safety & Health Handbook

§ 7. **Sources of Authority**

- N.C.G.S. § 126-4(10)
- 25 NCAC 01N .0300

  The following rules expired November 1, 2016:

  - 25 NCAC 01N .0301 Education And Training
  - 25 NCAC 01N .0302 Basic Education And Training Component

Acquired Immune Deficiency Syndrome (AIDS) In the Workplace Policy (cont.)

- 25 NCAC 01N .0303 Advanced Education And Training Component

The following rules are still in effect:

- 25 NCAC 01N .0304 Anti-discrimination
- 25 NCAC 01N .0305 Testing And Examination
- 25 NCAC 01N .0306 Confidentiality
- 25 NCAC 01N .0307 Complaints And Discipline

§ 8. History of This Policy

Date	Version
November 1, 1990	First version
May 1, 1991	Deleted requirement for a Certificate of Completion to become a part of employee's personnel record. Changed from two to three years for training to be completed. Changed to November 1 (rather than within 6 months) to have advanced training provided.
March 1, 1992	Deleted reference to Wellness Program – make agency responsible for training.
June 1, 1992	Training requirement changed to comply with federal regulations.
December 5, 2019	Deletes obsolete language related to now expired rules and that restates administrative rules that are still in effect listed in Section 7 Sources of Authority. This policy was codified before the ADA was effective so many of the protections are now more fully addressed in the ADA.

Adverse Weather Policy

Contents:

§ 1. Policy

The State of North Carolina must ensure the delivery of critical services to citizens and businesses even during times of adverse weather conditions and facilitate an orderly transition to more limited operations if conditions make that necessary. Considering the varied geographic locations and diversity of State operations, it is the intent of this policy to establish a uniform statewide policy regarding how operations will be affected during times

Adverse Weather Policy (cont.)

of adverse weather conditions and to establish guidelines for accounting for work hours, and to educate state employees on their responsibilities.

NOTE: See Emergency Closing policy for conditions that warrant closure of a facility/location such as an Emergency evacuation order or unsafe building structure.

§ 2. Employees Covered

This policy applies to all employee's subject to the State Human Resources Act.

§ 3. Definitions

Adverse Weather Event: Snow, ice, high winds, storms, tornados, earthquakes, hurricanes, flooding, and other weather events that may create a variety of safety risks to employees, impede the ability of employees to travel to or from work, or impact the State's ability to maintain normal operations for clients, customers, patients, or the general public. Such events, also can result in significant logistical challenges, before, during and after the event, including preparation activities, loss of utilities, information technology (IT), communication capabilities, shutting down and protecting computer servers, laboratories, etc. and other critical infrastructure that may impede functioning of State agencies.

Adverse Weather Leave: Leave option to be utilized due to an adverse weather event by employees not designated as Emergency, if no compensatory time is available to account for the absence, and no other leave options are utilized.

Adverse Weather Leave Make-Up: Method for employees not designated as Emergency to make up time missed from work which was recorded as adverse weather leave. Time must be made up within ninety (90) days after the leave was so designated and can only be made up with supervisor approval and consistent with all agency guidelines.

Declaration of a State of Emergency: Under certain adverse weather conditions, the Governor may issue a declaration of a "State of Emergency." The declaration of a "State of Emergency" by the Governor does not suspend operations for state government. Rather, during a "State of Emergency," non-Emergency employees are strongly encouraged to stay off the road unless it is an emergency travel situation and will be expected to follow the provisions of the Adverse Weather policy for accounting for lost time from work.

Emergency Employees: Employees who are required to work during adverse weather conditions because their positions have been designated in advance by their agency head or designee as essential to agency operations or are designated "called-in" during an event

Adverse Weather Policy (cont.)

as necessary in response to an adverse weather event in compliance with the agency's emergency response plan.

Emergency Operations: Services that have been determined necessary by the agency head. These services typically fall into the areas of law enforcement/public safety, direct patient care, facility maintenance, food service, but could also include support and administrative operations and other jobs/services that are considered essential. These operations may vary depending on the nature of the situation.

§ 4. Designation of Emergency and Non-Emergency Operations

Agency heads shall predetermine which operations will be designated as Emergency during adverse weather conditions. Emergency employees are expected to report to or remain at work during adverse weather and, if deemed necessary, to work a differing schedule or shift than normally assigned. When required to report to work during these events, the employee is expected to make a substantial and good faith effort to reach the work site in a timely manner.

Emergency employees shall be notified in advance by the employing agency, in writing (or alternatively by electronic means) of their designation. This notification may be accomplished at any point in an employee's service with the agency and will be considered an ongoing condition of employment. Additionally, the agency may also take the unusual measure of "calling-in" employees who are not normally designated as "Emergency" and temporarily assigning them to this status, if a specific adverse weather or emergency event so requires.

Employees who are not designated as Emergency shall also be notified of their designation and options for reporting to work and accounting for lost time from work during adverse weather event. Employees are expected to make a good faith effort to report to work or remain at work during an adverse weather event while using their best judgment to remain as safe as possible. Employees who anticipate problems in their commute to and from work should be permitted to make use of the adverse weather leave options.

Adverse Weather Policy (cont.)

§ 5. Closing Non-Emergency Operations During Adverse Weather Event (applicable to specific locations impacted by event)

In general, State government offices and facilities are OPEN, during an adverse weather event. However, limited staff resources or other logistical challenges or outcomes from an adverse weather event may require the decision to limit non-Emergency operations.

§ 5.1. Declaration of a State of Emergency:

Under certain adverse weather conditions, the Governor may issue a declaration of a "State of Emergency." The declaration of a "State of Emergency" by the Governor does not suspend operations for state government. Rather, during a "State of Emergency," non-Emergency employees are strongly encouraged to stay off the road unless it is an emergency travel situation and will be expected to follow the provisions of the Adverse Weather policy for accounting for lost time from work. With the approval of the supervisor, non-Emergency employees may be allowed to work from home or from an alternate work site if their job duties can be accommodated by a temporary reassignment of duty station.

§ 5.2. Suspending non-Emergency services at a specific State facility to the public only (anywhere in the state):

Agency head or designee shall determine when services to the public at a specific location shall be suspended due to conditions caused by the adverse weather event (i.e., limited staffing, short duration power outage, unsafe conditions at the work location, etc.) Any such decision to suspend services/close to the public requires following a departmental protocol to include a communication plan for notifying the public of suspended services. Employees may work or operate under the Adverse Weather policy in the event of such closing to the public.

§ 5.3. Suspending non-Emergency services at a specific State facility to the public only (anywhere in the state):

Agency head or designee shall determine when services to the public at a specific location shall be suspended due to conditions caused by the adverse weather event (i.e., limited staffing, short duration power outage, unsafe conditions at the work location, etc.) Any such decision to suspend services/close to the public requires following a departmental protocol to include a communication plan for notifying the public of suspended services. **Employees may work or operate under the Adverse Weather policy in the event of such closing to the public.**

Adverse Weather Policy (cont.)

§ 5.4. Closing a specific State facility to non-Emergency employees and the public (anywhere in the state):

A state facility is not to be closed to the public and employees merely due to the occurrence of an adverse weather event. As noted above, the declaration of a "State of Emergency" by the Governor is not a closing of state government. A closing including employees would happen only if the specific location is unsafe for use or Emergency evacuation is in place in which case the *Emergency Closing policy* would apply. Agency heads shall determine when a location shall be closed to both the public and employees following the *Emergency Closing Policy* when weather and/or building conditions are determined by emergency/public safety officials or the agency head in consultation with the agency's safety officer and human resources director to be hazardous to life or safety of both the general public as well as employees at a specific location or worksite. Any such decision to close a specific location to the public and employees requires approval by the Agency head or designee and transmission of an Emergency Closing Notification form to the State Human Resources Director within five (5) calendar days after the occurrence. **In rare circumstances, based on severe conditions, the Governor may decide to suspend non-Emergency operations in an affected geographical area. The Governor's Office will announce the suspension decision related to non-Emergency administrative operations.**

The Office of State Human Resources will communicate any such announcement to Human Resource Directors. In these scenarios, impacted employees shall follow the provisions of the Emergency Closing policy for accounting for lost time from work.

NOTE: This is utilization of the Emergency Closing policy but listed within this policy for clarity.

§ 5.5. Early Release of non-Emergency employees at a specific location (anywhere in the state):

When adverse weather conditions are forecast to commence during the scheduled business day, the agency head or designee may inform non-Emergency employees of the adverse weather event and encourage employees to use their best judgement in making decisions regarding travel to and from work. The agency head or designee may make

Adverse Weather Policy (cont.)

decisions regarding suspending services to the public at this time. Employees shall operate under the Adverse Weather policy to account for time lost from work.

§ 5.6. Limited Operations or Closures for Rented or Leased State Facilities:

Agencies that lease office space from non-State entities should communicate to employees that the agency, and not the landlord, will make the decision whether non-Emergency or Emergency operations are suspended.

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§ 6. Agencies that lease office space from non-State entities must prepare in advance for adverse weather events:

1. Plan with property management;
2. Review applicable Continuity of Operations Plan (COOP);
3. Evaluate alternative arrangements for employees to continue working throughout the event should the location be closed; and
4. Develop communication procedures that at a minimum include how communication between property management and Director/Manager at the leased location will take place, how Director/Manager will notify staff of any changes in operational status, and how information about the status of the location will be shared with the appropriate Agency Head (or designee.)

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§ 7. Agencies must consider the following options when planning for adverse weather in leased spaces when the facility is closed:

1. The agency shall make every effort to relocate affected employees to an alternate work location.
2. If the agency is unable to relocate affected employees to an alternate work location, the agency is responsible for determining if remote work may be completed elsewhere by employees.
3. If the agency cannot relocate or provide remote work, the agency may approve the use of the Adverse Weather policy to account for time not worked.

Adverse Weather Policy (cont.)

§ 8. Communicating Adverse Weather Conditions and Impact on Operations

Agency heads or their designees shall be responsible for developing and maintaining procedures for notifying employees of expectations for remaining at work, reporting to work, or accounting for lost time from work time when adverse weather conditions arise. There also shall be a communication plan for notifying the public if services are suspended.

§ 9. Failure of Emergency Employees to Report

An Emergency employee's failure to report to work or remain at work may result in disciplinary action and requiring the hours missed to be charged to leave with or without pay, as appropriate, as determined by management.

During adverse weather conditions, the Governor or the State Highway Patrol may ask motorists to stay off the road unless it is absolutely necessary to travel. When this travel notice is issued, a Emergency employee is still expected to report to work.

Exception: When weather conditions cause a Emergency employee to arrive late, the agency head or designee may determine that the conditions justified the late arrival. A Emergency employee is expected to notify his/her supervisor or designee of his/her inability to report to work at the designated time due to weather conditions so essential work operations are covered in his/her absence. In such cases, the lost time may be made up in lieu of using paid leave or leave without pay.

§ 10. Return to Work

Employees are expected to return to work within a reasonable timeframe after an adverse weather event at their worksite and the geographic areas within their commute to and from their worksite. Communication between employees and their immediate supervisor is essential during this time frame.

§ 11. Accounting for Time

Agencies are encouraged to develop guidelines regarding flexible work schedules and/or alternative work arrangements which may be appropriate during adverse weather events. When an employee not designated Emergency is unable to report to work, or reports to work late due to adverse weather, time lost from work shall first be charged to accrued

Adverse Weather Policy (cont.)

compensatory time (i.e., holiday, compensatory, overtime, gap hours, callback, on-call, travel, or emergency closing comp time). If the employee does not have accrued compensatory time or have sufficient compensatory time to cover the entire period of absence, then the employee has the following options to account for time lost from work:

- use vacation leave,
- use bonus leave, or
- request approval to take leave without pay (LWOP).

Following agency guidelines where operational needs allow, and a supervisor approves, an employee may be allowed to make up the time lost to adverse weather. Make-up time is not an employee entitlement and agencies may differ on their protocols permitting employees to make up or not make up work. Make-up time must be supported by an operational need, and not the individual employee's desire to make up time lost due to adverse weather instead of using vacation leave, bonus leave or leave without pay. Employees shall consult with their agency's Human Resources Division for their agency protocol in all cases.

The adverse weather policy does not cover child or elder care issues resulting from school or day care center closing decisions that may occur in advance of or after adverse weather events. For such situations, approved (compensatory time, vacation leave, bonus leave, etc.) is the appropriate category to account for such absences, or an employee with insufficient leave balances may request permission to take leave without pay. In addition, an employee may work with their supervisor regarding standard flexible working arrangements as determined by agency policy/practice.

Employees who are on prearranged vacation leave or sick leave must charge leave to the appropriate vacation or sick leave account with no provision for make-up time.

§ 12. Adverse Weather Leave Make-Up Provisions

The agency may, but is not required, to offer employees the option of make-up time in lieu of paid leave or leave without pay (LWOP) in accordance with the provisions outlined below.

Adverse Weather Policy (cont.)

- If management approves adverse weather make-up time, the supervisor shall be responsible for scheduling make-up time within the same pay period as the adverse weather event, if possible.
- If adverse weather leave make-up time cannot be scheduled within the same pay period, management shall schedule the make-up time within 90 days of the adverse weather absence. If it is not made up within 90 days, vacation or bonus leave shall be charged. If there is insufficient vacation or bonus leave to cover the adverse weather leave liability, payment for the time originally paid as adverse weather leave shall be deducted from the employee's next paycheck.
- Management may schedule make-up time in a workweek which results in overtime, if there is a bona-fide operational need to schedule overtime work. The supervisor shall notify the employee when make-up time is approved and scheduled. Upon notice of approval, the employee is expected to report to work and perform the make-up work as scheduled.
- Management and employees shall cooperate in making reasonable efforts to arrange schedules and identify operational needs for overtime work in order to enable an employee to be given the opportunity to make-up time not worked, rather than charging it to leave.
- Employees who volunteer to make up time on a holiday will not receive Holiday Premium Pay or equal time off with pay. Supervisors must approve working on a holiday to make up adverse weather time. (NOTE: For employees recording time in the Integrated HR/Payroll system, time worked on a holiday to make up time should be recorded as 9514 – Adverse Weather Make-Up which will prevent holiday premium pay automatically.)

If an employee has an outstanding adverse weather leave liability (balance of leave approved for make-up), all additional time exceeding regular work schedule worked after the adverse weather absence shall be credited towards resolving the adverse weather leave liability. This includes compensatory time earned for holidays, overtime, gap hours, callback, on-call, travel or emergency closings.

Adverse Weather Policy (cont.)

§ 13. Extended Leave of Absence

If an employee subsequently requests an extended leave of absence with or without pay (including absences due to Family Medical Leave, Short-Term Disability and Worker's Compensation), the liability owed for time not worked during an adverse weather event shall be resolved through use of vacation or bonus leave prior to the extended leave of absence. If there is insufficient vacation or bonus leave to cover the adverse weather liability, the amount paid for adverse weather leave shall be deducted from the employee's paycheck prior to the start of the extended leave of absence. An "extended leave of absence" is an absence in excess of one half of the regularly scheduled workdays and holidays in the month or in the pay period, whichever is applicable.

§ 14. Transfer to Another State Agency

If the employee transfers to another State agency before any adverse weather leave liability is resolved, it must be charged to vacation or bonus leave or deducted from the final paycheck if there is insufficient leave to cover the adverse weather liability prior to the transfer.

§ 15. Separation

If an employee separates from State government before any adverse weather liability is resolved, it must be charged to vacation or bonus leave or deducted from the final paycheck, if there is insufficient leave to cover the adverse weather leave liability.

§ 16. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5) and (10)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1005

§ 17. History of This Policy

Date	Version

Adverse Weather Policy (cont.)

January 28, 1955	• All absences from work must be charged to leave. When weather conditions are severe enough to endanger the health or
October 1, 1971	• Establishment of adverse weather policy. Employees unable to get to work due to hazardous driving conditions will be given an opportunity to make up the hours lost or the employee may use vacation or petty leave. No announcement will be made on radio or any other means concerning the closing of State offices.
May 1, 1978	• An employee may make up time due to adverse weather without being subject to overtime compensation.
February 1, 1982	• Adverse weather conditions policy approved for Wake County and for areas outside of Wake County.
April 1, 1986	• Make-up provision revised to not allow time to result in overtime; also special provision for catastrophic conditions added.
May 1, 1989	• Make-up time must be made up in one year.
July 1, 1995	• Revised make-up provisions that time must be made up within 12 months from occurrence of the absence. If not, charged to vacation leave or leave without pay.
February 21, 2000	• Advisory Note added to incorporate the clarification in Mr. Penny's memo of February 21, 2000 regarding make-up time for adverse weather. Employees may use compensatory time to make up for time lost due to adverse weather if management approves the overtime in response to bona fide needs for work in excess of forty [40] hours. If there is no bona fide need for overtime, then the make-up time must be limited to weeks when an employee has not worked a full forty [40] hours due to scheduled or unscheduled absences. safety of employees, an official determination will be made by State Personnel.
September 30, 2002	• Added provisions for bonus leave.
August 1, 2003	• Changed the policy to allow closings in case of emergencies other than weather conditions, such as terrorist acts, contamination by hazardous agents, disruption of power, equipment failure, etc.

Adverse Weather Policy (cont.)

	Also, gives agencies and universities authority to make that decision in certain instances. (Rule approved effective January 1, 2004.)
April 1, 2008	• Provision added to require agencies to report an emergency closing when implementing the following provision which was inadvertently omitted from the policy: "Individual agency heads or their designees shall make decisions about closings when emergency conditions affect that agency only."
April 1, 2009	• Adds provision to clarify that employees who are on prearranged vacation leave or sick leave during emergency closings will charge leave to the appropriate account with no provision for make-up time – the same as for adverse weather or other conditions of a serious nature.
January 1, 2015	• Emergency closing provisions of the policy have been removed and are included as an independent policy in the Leave Section of the HR Manual titled "Emergency Closing". • Added definitions for adverse weather conditions, mandatory/non- mandatory employees, and mandatory/non-mandatory operations. • Removed all reference to adverse weather "closures" and instead reference "suspension of non-mandatory services". • Clarified that the decision of "suspension of services" should only apply to operations in the geographic area directly impacted by the adverse weather conditions. • Clarified that rented office space from a non-state entity should have an agreement or understanding on who makes decisions on the suspension of services based on adverse weather conditions. • Clarified that a declaration of a "State of Emergency" does not impact the provisions of the Adverse Weather Policy concerning decision making authority of agency heads and the expectation for mandatory employees to report to work. • Addition of a requirement for non-mandatory employees to use accrued compensatory time to account for the lost time from work. If

Adverse Weather Policy (cont.)

	there is no accrued comp time, then the employee will have a choice to use vacation or bonus leave or leave without pay. • Clarification that the option for make-up time requires supervisor approval which must be supported by operational need and not the individual employee's desire to make up the adverse weather in lieu of use of leave or leave without pay. • Removed the requirement for FLSA-nonexempt employees to only be allowed to make up adverse weather leave during a week in which they are using leave or have a paid holiday in order to avoid overtime compensation. • Supervisor is required to schedule the make-up time within the same pay period if possible or within 90 days of the adverse weather event. • Time not made up within 90 days will automatically be deducted from vacation or bonus leave if sufficient balances are available to cover the liability. If the employee does not have sufficient leave to cover the liability, then the outstanding balance will be deducted from the next paycheck. • The adverse weather liability shall be resolved prior to an employee starting an extended leave of absence. • Removed the requirement for adverse weather "suspension of service" decisions to be reported to the State HR Director.
February 4, 2016	• Added new definition of Adverse Weather. • Updated "Landlords do not make the decision to suspend operations" heading to "Limited Operations or Closures for Rented or Leased State Facilities" for clarity. • Changed "Administrative agencies within Wake County" to "Administrative Operations within Wake County" for clarity. • Removed mention of the University of North Carolina System. SHRC approved an Adverse Weather and Emergency Event Policy for the • University of NC System, effective January 1, 2016

Adverse Weather Policy (cont.)

	• Added “Early Release due to Adverse Weather” to allow reasonable time for employees to return home or to a safe location prior to the commencement of an adverse weather event. • Added “Return to Work” to clarify a reasonable time in which an employee is expected to return to work after an adverse weather event. • Updated “Accounting for Time” to include early release. • Removed National Weather Service designation, as adverse weather conditions also apply during periods of time that are not designated or issued by the National Weather Service.
	• Accounting for Time reworded to provide clarity and advises agencies to develop guidelines regarding flexible work schedules and/or alternative work arrangements which may be appropriate during adverse weather events. Also advises employees to consult with their agency Human Resources Division for their agency protocol in all cases. • Renamed Make Up Provisions section to Adverse Weather Leave Make-Up Provisions and rearranged paragraphs for flow and readability. Also added a note for employees recording time in the Integrated HR/Payroll system, time worked on a holiday to make up time should be recorded as 9514 Adverse Weather Make-Up which will prevent holiday premium pay automatically. • Extended Leave of Absence section was revised to clarify the liability owed for time not worked during an adverse weather event shall be resolved through use of vacation or bonus leave prior to the extended leave of absence. • Transfer to Another State Agency section was revised to provide clarity if an employee transfers to another state agency before any adverse weather leave liability is resolved, it must be charged to vacation or bonus leave or deducted from the final paycheck if there is insufficient leave to cover the adverse weather leave liability prior to the transfer.

Adverse Weather Policy (cont.)

	• Minor revisions were made in the Separation section to clarify if an employee separates from state government before any adverse weather leave liability is resolved, it must be charged to vacation or bonus leave or deducted from the final paycheck if there is insufficient leave to cover the adverse weather leave liability.
October 3, 2019	• Reworded and clarified the Policy section to strengthen the intent of the Adverse Weather Policy. • Added Note to reference Emergency Closing Policy for conditions that warrant closure of a facility/location such as a mandatory evacuation order or unsafe building structure. • Definitions: Added new definitions to explain commonly used terms that were not included in the policy previously. These terms include the following: • Adverse Weather Leave • Adverse Weather Make-Up • Declaration of a State of Emergency • Deleted non-mandatory employees and non-mandatory operations definitions as these terms are no longer used in this policy. • Designation of Mandatory and Non-Mandatory Operations- • Verbiage was revised to spell out expectations regarding reporting to work, remaining at work or differing schedules/shifts for employees designated as mandatory. • Verbiage was revised to provide clearer guidance to agency management regarding designating employees as mandatory; also includes that notifications may occur at any point in time and as such is considered a condition of employment. • Added verbiage to permit agencies to call-in employees who are not normally designated as mandatory and temporarily assign them to this status if a specific adverse weather event requires such action.

Adverse Weather Policy (cont.)

	• Renamed Who Determines When Non-Mandatory Operations will be Suspended Due to Adverse Weather Condition section to Closing Non-Mandatory Operations During Adverse Weather Event for improved flow and reorganization of related topics. • Deleted Administrative Operations within Wake County section as the intent of this section is now reflected in the Closing a specific State facility to non-mandatory employees and the public section. • Deleted Agencies with Non-Administrative Operations within Wake County and Staff Outside the Wake County Area Including 24-hour Operations section as this matter is now addressed in the Suspending non-mandatory services at a specific State facility to the public only section. • Clarified and created a new sub-section which addresses the Suspension of non-mandatory services to the public only which may be caused due to short duration power outage, limited staff issues which necessitate suspension of services. Also clarifies employees may work or operate under the Adverse Weather policy in the event of such closing to the public. • Closing of a state facility to non-mandatory employees and to the public is listed to merely clarify state facilities are not to be closed based on adverse weather events and that a State of Emergency by the Governor is not a closing of state government. Also added verbiage in an attempt to differentiate adverse weather from the emergency closing policy (includes agencies responsibility for reporting actual emergency closings to OSHR within five days after the occurrence). • Expanded the Early Release of non-mandatory employees at a specific location section which is intended to encourage employees to use their best judgement in making decisions regarding travel to and from work. This section also restates the agency head or designee may make decisions regarding suspending services to the

Adverse Weather Policy (cont.)

	public at this time and notes employees shall operate under the Adverse Weather policy to account for time lost from work. • Limited Operations or Closures of Leased State Facilities clarifies and adds guidance to agencies to prepare in advance of adverse weather events. This includes: • Plan with property management; • Review applicable Continuity of Operations Plan (COOP); • Evaluate alternative arrangements for employees to continue working throughout the event should the location be closed; and • Develop communication procedures that at a minimum include how communication between property management and Director/Manager at the leased location will take place, how Director/Manager will notify staff of any changes in operational status, and how information about the status of the location will be shared with the appropriate Agency Head (or designee.) • Agencies must consider the following options when planning for adverse weather in leased spaces when the facility is closed: • The agency shall make every effort to relocate affected employees to an alternate work location. • If the agency is unable to relocate affected employees to an alternate work location, the agency is responsible for determining if remote work may be completed elsewhere by employees. • If the agency cannot relocate or provide remote work, the agency may approve the use of the Adverse Weather policy to account for time not worked. • Communicating Adverse Weather Conditions and the Suspension of Non-Mandatory Operations was renamed to Communicating Adverse Weather Conditions and Impact on Operations to better align with the content in the section. Also charges agencies with developing a communication plan for notifying the public is services are suspended.

Adverse Weather Policy (cont.)

	• Failure of Mandatory Employees to Report section revised the Exception note to delete the words “no disciplinary action will be taken” from the last sentence. • Return to Work section was revised for readability by reframing sentences; reasonable timeframe explanation was deleted. September 25, 2019.
February 4, 2021	Policy reviewed by Total Rewards-Salary Administration Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Updated Adverse Weather policy to more closely reflect Administrative rule 25 NCAC 01E .1005, by updating the usage of “Mandatory” (e.g., “Mandatory Employees”, “Mandatory Operations”) to “Emergency”. Reported to SHRC on February 4, 2021.

Applicant Reference Checks Policy

Contents:

§ 1. Policy

Prior to extending an offer of employment it is required that reference checks be completed on the selected applicant. The applicant's signed application authorizes the State to request information pertinent to the applicant's work experience, education, and training.

§ 2. Coverage

This Policy applies to all candidates who are applying for positions which are subject to State HR Commission policies issued under N.C.G.S. § 126-4(4). This includes, but is not limited to probationary, time limited, exempt policymaking, and exempt managerial employees. It does not apply to public school employees, employees of the Community College system, or other employees who are exempt from State HR Commission policies issued under N.C.G.S. § 126-4(4).

§ 3. Definitions

Criminal Background Check: a search of county, state, federal and/or national databases to provide information about an applicant's criminal history.

Employment Verification: process of confirming current or past employment provided by an applicant by verifying job titles and dates of employment. Salary history is not to be considered.

Reference Check: a process of getting information about an applicant from their previous employers, schools, and other available resources. Reference checks are used to verify information given by the applicant during the interview, on the application, and through

Applicant Reference Checks Policy (cont.)

supplemental documents supplied by the applicant. Reference checks are also used to determine new information such as eligibility for rehire, active disciplinary actions, and attendance.

§ 4. Employment Verification

1. Verify employment with at least two recent employers. Confirm:
   - Dates of Employment
   - Position(s) held
   - Eligibility for Rehire
2. Do not ask about salary history.

In addition, academic credentials must be verified. See the *Selection of Applicants Policy*, Section 5, for details about verifying academic credentials.

The employment verification and reference check may be combined if applicable.

§ 5. Reference Checks

1. Call or email a minimum of two individuals listed as current or most recent prior supervisors on application (for work most related to the job being sought):
   - Overall performance
   - Attendance
   - Experience applicable for job being sought
   - Reason for leaving
   - Eligibility for rehire
   - Whether the applicant was involuntarily terminated for cause
   - Any active disciplinary actions (See the Disciplinary Action Policy, section VI, for the situations in which a disciplinary action remains active for North Carolina state employers.)
2. If applicant has current or prior work history with a state agency or university, at least the most recent state agency or university must be contacted for one of the two required reference checks. The reference check can be either with the previous supervisor or through the hiring agency Human Resources Office.

In addition, an agency may choose to make part of its systematic hiring process obtaining copies of performance documents within NCVIP pursuant to N.C.G.S. § 126-

Applicant Reference Checks Policy (cont.)

24(2a). The agency must be consistent about whether it obtains these documents for its job openings. If the overall performance appraisal rating shows the employee has an active disciplinary action or is **"**Not Meeting Expectations,**"** the hiring manager should discuss with the hiring Agency Head or designee before extending a job offer.

If the reference check shows that the employee was involuntarily terminated from a prior state agency, is not eligible for rehire with a previous employer, or has an active disciplinary action:

- In this situation, approval to extend a job offer must be obtained from the hiring Agency Head or designee.
- An applicant who was terminated due to a Reduction in Force or who was involuntarily terminated an in "End of Appointment" separation (usually created when an employee exempt from the State Human Resources Act is replaced) does not require approval from an agency head or designee, unless they have an active disciplinary action.

For reference checks:

- If unable to obtain references from the current or former supervisors (generally due to the inability to reach the previous supervisor or the unwillingness to share information), others in the management chain or the prior employer's Human Resources office may be substituted.
- Some references may not be able to answer all the questions in a reference check. That does not automatically remove an applicant from consideration.
- If the applicant recently finished school or has limited work history and is unable to provide contact information for two supervisors, references may be obtained from educators or organizations where the applicant has served in volunteer roles.

§ 6. Criminal Background Check (If Agency requires background check for position.):

1. Background checks should be done after the initial interview unless the position is one that a criminal conviction would legally preclude the person from employment in the particular position for which they applied.

Applicant Reference Checks Policy (cont.)

§ 7. For All Background Checks:

- When assessing an applicant's background information, apply the job-related standards consistently, regardless of their race, national origin, color, sex (including sexual orientation, pregnancy, and gender identity/expression), religion, disability, genetic information (including family medical history), or age (40 or older).
- Any use of an applicant's background information to make an employment decision must comply with federal and State laws that protect applicants and employees from discrimination, including retaliation.
- Review and follow agency guidelines to ensure consistency in background check processes.
- See the Selection of Applicants Policy, Section 4, if the agency discovers than an applicant provided false or misleading information on a State application.

§ 8. Agencies shall create their internal processes to:

1. Follow this policy's required reference check procedures and templates, unless the agency receives written approval by OSHR to establish agency guidelines, procedures and templates that meet minimum requirements.
   - Ensure required employment verification and reference checks are completed on selected applicant.
   - Ensure background checks are conducted, as required by an agency.
   - Ensure approval is obtained from the hiring agency head or designee prior to extending a job offer to any applicant who has a prior involuntary termination from a state agency, is not eligible for rehire with a previous employer, or has an active disciplinary action.
2. Identify when a hiring manager can independently decide to hire an applicant whose employment verification or references indicate they are not eligible for rehire by another employer/agency due to non-performance/conduct reasons (ex. failure to provide 2 weeks' notice).
   - Delegation to a hiring manager does not eliminate the requirement that approval must be obtained from an agency head or designee to extend an offer to a

Applicant Reference Checks Policy (cont.)

candidate with state experience who has a) a prior involuntary termination from a state agency or b) an active disciplinary action.

3. Train managers on required reference check procedures and templates.
4. Identify when an agency head or designee should review and approve hiring an individual when there is a nexus between a criminal record and the position's duties.
5. Conduct annual self-assessment of agency's reference check processes to ensure standards contained in this policy.

§ 9. Office of State Human Resources Responsibilities

The Office of State Human Resources shall:

- Provide training and consultation to agency human resources staff.
- Provide required reference check procedures and templates.
- Review variation requests for agency guidelines to confirm acceptable substitute.
- Develop a self-assessment program and require that agencies periodically conduct self-assessments and report the results to the Office of State Human Resources.
- Include program review of the reference check processes in regular agency performance audits.

§ 10. Sources of Authority

This policy is issues under the authority of:

- N.C.G.S. § 126-4(4) (authorizing the Commission to adopt rules or policies governing "[r]ecruitment programs designed to promote public employment … and attract a sufficient flow of internal and external applicants");
- N.C.G.S. § 126-14.3(1) (requiring the Commission to adopt rules or policies to "[a]ssure recruitment, selection, and hiring procedures that encourage open and fair competition for positions in State government employment and that encourage the hiring of a diverse State government workforce")

This policy is compliant with:

- N.C.G.S. § 126-30(b) (requiring that the "employing authority within each department, university, board, or commission, shall verify the status of credentials and the accuracy of statements contained in the application of each new employee within 90 days from the date of the employee's employment").

Applicant Reference Checks Policy (cont.)

§ 11. History of This Policy

Date	Version
February 4, 2021	First version. Policy created by Deputy Director/Recruitment Division to confirm alignment with required practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Presented to SHRC on February 4, 2021.
December 8, 2022 (effective February 15, 2023)	Update policy to: • Ensure it does not create barriers to entry for public-sector employees. Questions about involuntary dismissal for cause and disciplinary actions now required in reference check regardless whether employee previously worked for the State. • Based on agency feedback, assist in reducing the time to hire by streamlining the employment verification and reference checks process. Performance management check now optional, rather than required.

Appointment Types and Career Status Policy

(For employees hired or reemployed before, on or after October 1, 2015)

Contents:

§ 1. Purpose

The purpose of this policy is to define employment requirements and summarize eligibility for benefits for the different types of employee appointments and define career State employee status.

§ 2. Definition of Appointment

An appointment is the approval or certification of an applicant or employee to perform the duties and responsibilities of an established position subject to the provisions of the State Human Resources Act. The selection and appointment of all personnel into classified state service shall be made by the head of the agency subject to final approval of the State Human Resources Director. The following are the types of employee appointments:

- Probationary
- Permanent
- Time-Limited
- Temporary

Appointment Types and Career Status Policy (cont.)

(For employees hired or reemployed before, on or after October 1, 2015)

§ 3. Probationary Appointment

Individuals receiving initial appointments to permanent positions must serve a probationary period. The probationary period is an extension of the selection process, and provides the time the new employee needs to achieve performance at or above the expectations of the job or to be separated if performance does not meet acceptable standards.

Individuals who are reemploying to a permanent position after a separation shall also serve a probationary period.

The probationary period shall be 12 months of either full-time or part-time employment from the actual date of employment or reemployment. Periods of extended leave of absence with or without pay do not suspend or increase the duration of the probationary period beyond 12 months. Extended leave is defined as leave in excess of one-half of the regularly scheduled workdays and holidays in the month. The probationary period in this policy is not the same as the probationary period prescribed for criminal justice officers.

§ 4. Responsibility of Supervisor during Probationary Period

The conditions of the probationary appointment shall be clearly conveyed to the applicant prior to appointment. During the probationary period, the supervisor shall work closely with the employee in counseling and assisting the employee to achieve satisfactory performance. The supervisor shall establish a work plan for the probationary employee and shall review the probationary employee's performance in compliance with the timeframes outlined in the Performance Management Policy located in Section 10 of the State Human Resources Manual. At the end of the probationary period when the supervisor, in consultation with other appropriate administrators, determines that the employee's performance indicates capability to perform satisfactorily and merits retention in the position, the employee shall be given a permanent appointment to the class. If instead, the supervisor determines that the employee's performance indicates that the employee is not suited for the position and does not meet acceptable performance standards, or for other causes related to performance of duties or personal conduct detrimental to the agency, the employee shall be separated from that position. The supervisor has the discretion to separate any employee not meeting acceptable performance standards or for other causes related to performance

Appointment Types and Career Status Policy (cont.)
(For employees hired or reemployed before, on or after October 1, 2015)

of duties or for personal conduct detrimental to the agency, prior to the completion of the 12-month probationary period. In this case, the supervisor should document the justification for the separation based on the previously documented performance discussions.

§ 5. Personnel Changes not subject to a Probationary Period

A probationary period shall not be required when an employee with a permanent appointment has any of the following changes:

- Promotion,
- Transfer,
- Demotion,
- Reinstatement after leave of absence, or
- Return of a policy-making/confidential exempt employee to a non-policy-making position.

§ 6. Probationary Period Requirement for Reduction-In-Force Reemployment

An employee with reduction-in-force priority consideration will be required to serve a new probationary period if the employee returns to work after a 31-day break in service. The employee must work another 12-month probationary period before career status is attained.

§ 7. Local Government Transfer Provisions

Employees transferring from a local government entity subject to the State Human Resources Act and who have already attained career status are not required to serve another probationary period. Employees who have a break in service (more than 31 days) between employment with the local government entity subject to the State Human Resources Act and the receiving state agency will be required to work a new probationary period of 12 months before career status is attained. Employees transferring from a local government entity that is exempt from the State Human Resources Act shall be required to work a 12-month probationary period before career status is attained.

Appointment Types and Career Status Policy (cont.)

(For employees hired or reemployed before, on or after October 1, 2015)

§ 8. Permanent Appointment

A permanent appointment is an appointment to a permanently established position when the incumbent is expected to be retained in the position on a permanent basis. A permanent appointment shall be given when the requirements of the probationary period have been satisfied, or a time-limited appointment extends beyond three years of continuous employment in the same time-limited position.

Individuals receiving initial appointments or reemploying after a break in service in state government must first serve a probationary appointment before being eligible for a permanent appointment.

§ 9. Time-Limited Appointment

A time-limited appointment is an appointment that has a limited duration:

- A time-limited appointment may be made in a permanent position that is vacant due to the incumbent's leave of absence. Time-limited appointments in a permanent position may be made when the replacement employee's services will be needed for a period of one year or less.
- A time-limited appointment may also be made in a time-limited position. If an employee is retained in a time-limited position beyond three years, the employee shall be designated as having a permanent appointment.

§ 10. Temporary Appointment

A temporary appointment is an appointment for a limited term, normally not to exceed three to six months, to a permanent or temporary position. Upon request, the Office of State Human Resources shall approve a longer period of time; but in no case shall the temporary employment period exceed 11 consecutive months.

Exceptions:

- Full-time students are exempt from the 11-month maximum limit. For purposes of this policy, "full-time students" are defined as those undergraduate students taking at least 12 credit hours or graduate students taking at least 9 credit hours.

Appointment Types and Career Status Policy (cont.)
(For employees hired or reemployed before, on or after October 1, 2015)

- Retired employees are exempt from the 11-month maximum limit if they sign a statement that they are not available for, nor seeking permanent employment, and are drawing a retirement income and/or Social Security benefits.
- Inmates that are on a work-release program are exempt from the 11-month maximum limit.
- Interns are exempt from the 11-month maximum limit. For purposes of this policy, "interns" are defined as those students who, regardless of the number of credit hours enrolled, work to gain occupational experience for a period of time not to exceed three months.
- Externs are exempt from the 11-month maximum limit. For purposes of this policy, "externs" are defined as those students who, regardless of the number of credit hours enrolled, are employed as part of a written agreement between the State and an academic institution through which the student is paid and earns course credit.

§ 11. Trainee Status

As stated in the Pay Administration Policy, a trainee progression can be established where appropriate to allow hiring of trainees when knowledge or skills, for a job classification, are not available in the existing labor pool or cannot be learned in a short period. See the Pay Administration Policy for specific information on setting salary progressions for trainees.

Trainees need not meet the minimum education and experience requirements for the position. Trainees may be hired only if no qualified candidate remains under consideration who meets the minimum education and experience requirements. The employee must meet the minimum education and experience requirements for the position within 24 months after the beginning of the trainee progression.

Trainee status is not a type of appointment. A trainee in a permanent position is a permanent employee and will become a career state employee if the trainee meets the criteria below.

§ 12. Career State Employee Defined

Career State employee is a State employee or a local government employee who:

- is in a permanent position; and

Appointment Types and Career Status Policy (cont.)
(For employees hired or reemployed before, on or after October 1, 2015)

- has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the State Personnel Act for the immediate 12 preceding months.

Employees who are hired by a State agency, department or university in a sworn law enforcement position or forensic scientist position and who are required to complete a formal training program prior to assuming law enforcement or forensic scientist duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months.

§ 13. Separation Prior to or After Achieving Career Status

Prior to achieving career status, an employee may be separated from service for causes relating to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. Except in cases of discrimination, a separation prior to achieving career status is not subject to the right of appeal. An employee alleging discrimination, may file a complaint following the process outlined in the Employee Grievance Policy located in Section 7 of the State Human Resources Manual.

Once an employee has achieved career status, the employee may be separated from service for causes relating to performance of duties, grossly inefficient job performance or for unacceptable personal conduct by following the process outlined in the Disciplinary Action, Suspension and Dismissal policy found in Section 7 of the State Human Resources Manual. The career State employee may appeal the separation by following the process outlined in the Employee Grievance Policy located in Section 7 of the State Human Resources Manual.

§ 14. Eligibility for Employee Benefits Based on Appointment Type

Eligibility for employee benefits such as accrued leave, paid holidays, total state service credit (TSS), retirement and health insurance benefits is based on an employee's type of appointment and the number of hours regularly scheduled to work in the workweek as follows:

Appointment Types and Career Status Policy (cont.)

(For employees hired or reemployed before, on or after October 1, 2015)

Appointment Type	Full-Time (40 or more hours)	Part-Time (30 to 39 hours)	Part-Time (20 to 29 hours)	Part-Time (less than 20 hours)
Probationary, Permanent and Time-limited	Leave – Yes Holidays – Yes TSS Credit – Yes Retirement – Yes Health Ins.- Yes	Leave – Prorated Holidays– Prorated TSS Credit – Yes Must work at least 9 months per year to be eligible for retirement and full coverage health insurance.	Leave – Prorated Holidays– Prorated TSS Credit – Yes Retirement – No Health Ins. – No but do have the option for self -pay coverage	Leave – No Holidays– No TSS Credit – No Retirement – No Health Ins. - No
Temporary	No benefits	No benefits	No benefits	No benefits

Eligibility for severance pay consideration and reduction in force priority reemployment is based on appointment type as follows:

Appointment Type	Eligibility
Probationary	Not eligible for severance or priority reemployment
Permanent	Eligible for severance consideration and priority reemployment
Time-Limited	Only eligible for severance consideration and priority reemployment if continuously employed for 36 months in the same time-limited position
Temporary	Not eligible for severance consideration or priority reemployment

Disclaimer: This is just a summary overview of eligibility for benefits. You should refer to the associated policy in the State Human Resources Manual for specific provisions related to the administration of accrued leave, paid holidays, total state service, severance pay, and priority reemployment. For policy provisions associated with retirement and health insurance benefits, you should contact the N.C. Office of the State Treasurer.

§ 15. Sources of Authority

- This policy is issued under the authority of N.C.G.S. § 126-4(6) (authorizing the Commission, subject to the approval of the Governor, to establish policies on the

Appointment Types and Career Status Policy (cont.)
(For employees hired or reemployed before, on or after October 1, 2015)

"appointment, promotion, transfer, demotion and suspension of employees") and N.C.G.S. § 126-4(7a) (authorizing the same for policies on "separation of employees").

- This policy is consistent with the administrative rules adopted by the Commission on this topic, 25 N.C.A.C. 01C .0401 to .0413.

§ 16. **History of This Policy**

Date	Version
August 4, 2016	First version
August 18, 2017	Added the full definition of "Career State employee" per HB495 and HB1044 Included: Employees who are hired by a State agency, department or university in a sworn law enforcement position or forensic scientist position and who are required to complete a formal training program prior to assuming law enforcement or forensic scientist duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months.
October 13, 2022	Modified policy to make clear that three-year time period calculation for time-limited positions counts time in the same time-limited position. Updated the policy's limit on continuous temporary employment to match change in Administrative Code rule.
December 8, 2022 (effective Feb. 15, 2023)	Provided more information on trainee status, including making clear that trainee status is not a type of appointment, and that trainees may be hired if no qualified candidate remains under consideration who meets the minimum education and experience requirements.

POLICY UPDATE

Bonus Leave

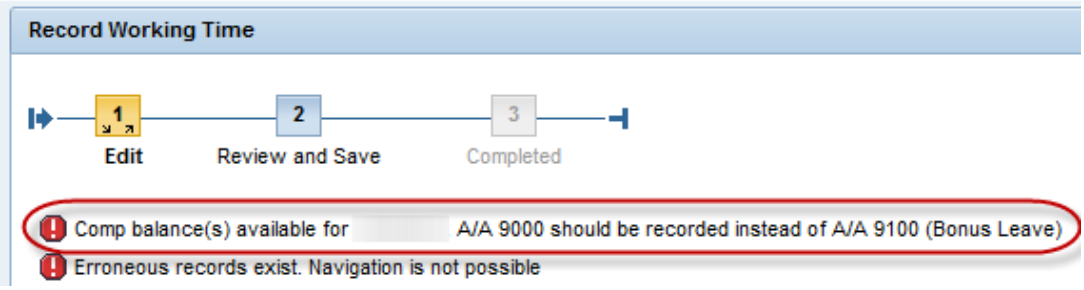
State Human Resources

Beginning September 1, 2015 Bonus Leave will no longer be part of the Approved Leave **(Code: 9000)** hierarchy. All leave-eligible state employees will use a new Attendance/Absence (A/A) type (**Code: 9100**) to request Bonus Leave.

Change to Approved Leave Hierarchy	
CURRENT HIERARCHY	
22 - Holiday Comp	
20 - Overtime Comp	
21 - Gap Hours	
23 - Callback Comp	
26 - On Call Comp	
24 - Travel Comp	
27 - Emergency Closing Comp	
29 - Incentive Leave	*Effective September 1, 2015, Bonus Leave will have a separate A/A Type*
10 - Vacation Leave	
~~***50 - Bonus Leave***~~ ***>>>***	***9100 - Bonus Leave***
31 - Advance Vacation Allowed	

Policy still requires that Comp Leave be used before Bonus Leave; when you access your timesheets, the system will not allow you to record Bonus Leave if Comp Leave balances exist. See example below:

Employee Self Service (ESS):



*Bonus Leave **DOES NOT** expire. It is recommended that you reserve Bonus Leave until all other Approved Leave is used.*

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If you have any questions, contact your agency's HR representative.

CONTENTS

Note: *The expanded delegation of authority provided in this Career Banding Salary Administration Policy for the UNC System will be reassessed within a two-year period for determination of continuing or modifying the policy and its administration.*

I. POLICY

A. Purpose. It is the policy of the university to compensate its employees at levels sufficient to encourage excellent performance and to maintain labor market competitiveness necessary to recruit, retain, and develop a competent and diverse work force. It is also the policy of the university to ensure that sound salary administration practices are followed and applied in order to maintain equitable compensation for similarly situated employee populations.

B. UNC Institutional Plans. Each UNC constituent institution is responsible for developing a Salary Administration Plan that ensures fair and equitable employee treatment through consistent application of career banding policy and guidelines. Pay decisions are the responsibility of individual institutions within the bounds of policy and guidelines. In all cases, institutional management must consider pay factors and provisions of the institution's Salary Administration Plan when making salary determinations. Institutional management is responsible for documenting the justification for salary decisions and for ensuring equity in accordance with the institution's Salary Administration Plan and its strategic goals and initiatives.

II. CAREER BANDING TERMS

A. Branch/Role (Banded Classifications). The Career Banding Compensation System includes 10 Job Families of professional fields. Each Family includes Branches of similar work categories within those professional fields, and Branches are then divided into specific Roles, also referred to as Banded Classifications. Each of these classification titles is further divided into three competency levels (Contributing, Journey, and Advanced). Position descriptions are assessed and assigned a Branch/Role and Competency Level in comparison to the Career Banding Classification Specifications and Competency Profiles available on the UNC System Human Resources website.

B. Classification Specifications and Competency Profiles. Documents that define a banded classification's typical range of position duties, the competencies required to perform those duties at the defined competency level (Contributing, Journey, and Advanced), and the minimum experience and training requirements to perform the work at those levels. Compensation analysts use the classification specifications and competency profiles in assessing position description documents and assign an appropriate banded classification title and competency level for the position.

C. Competencies. Sets of knowledge, skills, and abilities that employees need to perform their work successfully within a banded classification as defined in the Classification Specifications document and in the Competency Profile. Each banded classification includes three competency levels:

1. *Contributing Competencies.* The knowledge, skills, and abilities that are minimally necessary to perform a position classified at the contributing competency level based on business need.
2. *Journey Competencies.* Fully acquired knowledge, skills, and abilities demonstrated in the employee's work that meet the business need for positions classified at the journey competency level.
3. *Advanced Competencies.* The highest level and/or broadest scope of knowledge, skills, and abilities required and demonstrated in the employee's work for positions classified at the advanced competency level.

D. Market Index (MI). A ratio of an employee's salary to the appropriate competency market rate calculated by dividing the employee salary by the competency market rate. A market index of 1.00 indicates a salary equal to the competency market rate, whereas a market index of 0.95 indicates an employee salary that is 5% below the market rate and a market index of 1.05 indicates an employee salary that is 5% above the market rate.

E. Market Halo. The "halo" is the portion of the pay band that is within 10% above or 10% below a market rate. Most employee salaries would fall within this portion of the pay band, subject to available funding and equity considerations. The market halo can be used as part of the pay factor analysis for salary administration when comparing salaries for similarly situated employees.

F. Market Rate. The journey market rate is the central pay market rate for a classification salary band as determined through an analysis of the labor market by UNC System Human Resources when comparing benchmark classifications to relevant local, state, regional, and/or national organizations that recruit and hire employees with the same or similar competencies. Additional market rates are then determined, based around the journey market rate, and set as a contributing market rate for classifications at the contributing competency level and an advanced market rate for classifications at the advanced competency level. These market rates then establish the available salary ranges for a position based on its classification and competency level.

G. Pay Bands. The market-determined salary range for each banded classification in the career banding system approved by the State Human Resources Commission. Each pay band has a minimum and maximum rate, with market rates for each position competency level (*contributing*, *journey*, *advanced*).

H. Pay Equity. This is a fairness criterion that takes into consideration the proximity of one employee's salary to the salaries of others who have comparable levels of: education, certifications, and experience; duties and responsibilities; and knowledge, skills, and abilities. It considers salary compression, criticality of the position to the mission of the unit, and other organizational factors.

I. Pay Factors. Each proposed salary action requires thoughtful consideration of the following "F.A.I.R." pay factors: Funding; Appropriate Competency Market Rate; Internal Pay Alignment; and Required Competencies. (See Section III for more information.)

J. Position Description. The central document for career banding classifications. The position description includes: a list of job duties for a position; time and effort required for those duties; training and experience necessary to accomplish those duties at the level required for the position, mental and physical requirements for accomplishing those duties; including other considerations under the Americans with Disabilities Act; competencies associated with the position; and reporting/organizational relationships. Management completes and maintains a description for each position, revising and resubmitting to human resources for analysis as needed. Human Resources compares the duties and other information provided in the position description, compares these to the career banding Classification Specifications and Competency Profiles to determine the most appropriate banded classification and competency level for the position.

K. Range Revisions. A pay band revision is any change in a salary range approved by the State Human Resources Commission and resulting from changes in the labor market. Typically, this will result in a change in the minimum, contributing, journey, advanced, and maximum rates for the band but may not necessarily mean a change in all five reference points. However, for a band revision to occur, at least the journey market rate must change. UNC System Human Resources regularly assesses the pay bands for each banded classification. UNC System HR will conduct periodic market research to reassess one or more pay bands. Market research involves comparing benchmark classifications to relevant local, state, regional, and/or national organizations that recruit and hire employees with the same or similar competencies to ensure that the career banding compensation system remains comparable and competitive to the current labor market. Revisions to pay bands must be reviewed and approved by the State Human Resources Commission prior to implementation.

L. Salary Compression. When the pay of one or more employees is close to the pay of more highly trained and experienced -- but otherwise similarly situated -- employees performing the same duties and responsibilities in the same position at the same agency. Compression also occurs when the pay of one or more employees is close to the pay of those in higher level classifications or competency levels, such as managerial positions, or close to the pay of employees performing more complex or higher-level duties within the same classification and competency level. In some cases, funding differences or other neutral factors may make salary compression unavoidable. "Similarly situated employees" means employees in the same banded classification in the same institution, School/Division, and/or work unit who have comparable levels of: education and experience; duties and responsibilities; and knowledge, skills, and abilities.

III. PAY FACTORS

A. Financial Resources. The amount of funding that is available when making pay decisions based on university business need:

1. Available budget
2. Funding priorities

B. Appropriate Competency Market Rate. The rate applicable to the functional competencies necessary for the position and demonstrated by the employee based on:

1. Competency market rates and related market information
2. Overall competency level required for the position and aligned with the classification competency profile
3. Individual competencies associated with the classification level and required for a position's assigned duties.

C. Internal Pay Alignment. The consistent relative alignment of salaries among employees who demonstrate similar required competencies in the same banded classification and competency level within a work unit or organization considering:

1. Current internal pay alignment (equity) based on demonstrated and relevant competencies of similarly situated employees in a classification competency level
2. Current employee salaries and any existing salary compression or salaries below the expected salary range within the pay band
3. Current market-based salary climate for new recruitments that may affect the level of the minimum salary needed to secure candidates for a position also considering other compensation options (e.g., application of sign-on/retention bonuses when relevant and available)
4. Evidence-driven prioritization for salary enhancements based on available funding and aligned with the institution's Salary Administration Plan

Pay equity is of utmost importance, and it is the responsibility of each constituent institution to monitor and address any potential equity issues and to avoid exacerbating any existing pay inequity. Each institution is responsible for maintaining internal pay equity. If a potential equity issue is created, the proposed salary action must also contain a written plan to address how the institution or work unit will adjust similarly situated employee salaries affected by the proposed salary action when funding becomes available to address the inequity.

Salary actions must also document plans if a proposed salary action for an employee will result in the employee's being out of alignment with similarly situated employees. "Similarly situated employees" means employees in the same banded classification in the same institution, School/Division, and/or work unit who have comparable levels of: education and experience; duties and responsibilities; and knowledge, skills, and abilities.

Work units should take a consistent approach in assessing and prioritizing salary adjustments to address internal pay alignment and equity, consistent with equal employment opportunity standards. Identified misalignments should be addressed with any proposed salary adjustment within the similarly situated population with a plan of action to address the misalignment as soon as practicable.

D. Required Competencies. The functional competencies and associated levels that are required based on organizational business need and subsequently demonstrated on the job by the employee. Continuing development of existing position-related competencies, or acquisition of new position-related competencies, is a valuable addition to an employee's productive skillset within a banded classification and competency level and may be reflected with a salary increase. Assessment of changes to the employee's competencies and their relevance to the current position must be documented on the salary adjustment form and should address the following:

1. Minimum qualifications for classification and competency level
2. Knowledge, skills, and abilities outlined in the classification specification and competency profile
3. Related training and experience
4. Essential duties and responsibilities as noted in the position description
5. Training, certifications, degrees, position-related development programs/curricula, and licenses either required or preferred for the position or otherwise attained by the employee

Competencies must be relevant to, and demonstrated in, the employee's work, must be measured according to standards set in the classification specifications and related competency profiles, and must be relevant to the required duties within the position.

Employees can enhance their competencies within their position through work experience, the achievement of related academic degrees, position-related certifications and licenses, successful completion of significant position-related professional development programs/curricula, or similar industry-recognized achievements.

Increased demonstrated competencies applicable to the required duties of the position may result in new work that can be performed in the position such that the position might be reclassified to a different competency level and/or banded classification. This is distinct from a salary increase that recognizes employee growth within their current banded classification and competency level with increases competencies to achieve required position duties.

See Sections V and VI of this policy for more information on applying pay factors to specific types of salary actions.

IV. SALARY DETERMINATION

A. Salary Requirements by Competency Level

1. **Contributing Rate.** The salary for an employee who demonstrates required competencies within a position classified at the *contributing* competency level shall be below the journey market rate but not below the minimum of the class pay band.

2. **Journey Rate.** The salary for an employee who demonstrates required competencies within a position classified at the *journey* competency level shall be below the advanced market rate, and should be above the contributing market rate, unless financial resources or other pay factors prevent this.

3. **Advanced Rate.** The salary for an employee who demonstrates required competencies within a position classified at the *advanced* competency level shall be above the journey market rate unless financial resources or other pay factors prevent this. Salaries shall not exceed the maximum of the class pay band. (Exceptions must be approved by the Office of State Human Resources.)

B. Recruitment Salary. Salaries paid as a result of recruiting shall not exceed the maximum amount published for recruitment purposes in a vacancy announcement or be lower than the minimum amount published in the vacancy announcement.

C. Promotional Priority. Career status employees moving between career banded classifications have promotional priority when moving to a position with the same banded classification but with a higher competency level or when moving to a position in a different banded classification with a higher journey market rate than the position the employee currently holds. Career status employees moving between career banded and state agency classifications have promotional priority for positions at a higher salary grade (or salary grade equivalency as defined by OSHR) than the position the employee currently holds.

D. RIF Reemployment Priority. Reduction-in-force applicants (RIF) moving between banded classifications have priority for positions in the same banded classification at the same competency level or lower as that held at the time of notification, or for positions in a different banded classification with the same or lower journey market rate as that held at the time of notification. Reduction-in-force applicants moving between career banded and state agency classifications have priority for positions at the same salary grade (or salary grade equivalency as defined by OSHR) or below the position held at the time of RIF notification.

E. Effective Date. The effective date of all salary actions shall be on a current basis unless UNC System Human Resources approves an exception.

F. Approvals. Actions that exceed the delegated authority granted to institutions must be submitted to the UNC System Human Resources and the Office of State Human Resources for review and approval. Actions that exceed the delegated authority granted to institutions must be submitted with supporting documentation to the UNC System Human Resources for review and approval. Actions that exceed UNC System's delegation of authority will be sent to the Office of State Human Resources for final review and approval. UNC System Human Resources, in coordination with the Office of State Human Resources, will establish delegation thresholds for approving classification and salary actions and will clarify which level of administration must approve certain actions.

G. Documentation. Each proposed salary action must include a completed salary adjustment form that includes sufficient documentation to warrant the proposed action based on the appropriate pay factors for the proposed action. Such documentation must be maintained and made available for review to UNC System Human Resources if requested. Constituent institutions may establish their own salary adjustment forms or use/modify a template provided by UNC System Human Resources.

H. Disciplinary and Performance Restrictions. Employees with an active disciplinary action or with a final overall rating lower than "Meets Expectations" on their last annual performance appraisal are not eligible for a career banding salary increases. Such employees would regain eligibility once the disciplinary action becomes inactive and/or the employee achieves a final overall rating of "Meets Expectations" on their most recent annual performance appraisal. These restrictions would not necessarily preclude an employee from receiving a legislative salary increase if allowed by the NC General Assembly.

I. Other Salary Determination Considerations. Salaries shall be established and adjusted in accordance with the following provisions based on the type of salary action taken.

V. SALARY SETTING ACTIONS

A. Agency-University Transfer

1. *Definition.* Employee movement between university classes and agency classes through a competitive recruitment process.

2. *Salary Eligibility.*

   a. *Agency to University.* Salary is established based on application of all pay factors.
   b. U*niversity to Agency.* Salary is established by the Pay Administration Policy for agency classes.

B. Horizontal/Lateral Transfer

1. *Definition.* Employee movement from one position to another with the same competency market rate achieved through a competitive recruitment process or an approved waiver of recruitment.

2. *Salary Eligibility.* Salary shall be based on application of all pay factors. The salary cannot exceed the maximum of the salary range for the competency level.

C. New Hire

1. *Definition.* Initial State employment of an individual to a position achieved through a competitive recruitment process or an approved waiver of recruitment.

2. *Salary Eligibility.* Salary shall be set based on application of all pay factors.

D. Promotion

1. *Definition.* Employee movement from one position to another with a higher competency market rate achieved through a competitive recruitment process or an approved waiver of recruitment.

2. *Salary Eligibility.* Salary shall be based on application of all pay factors.

E. Reinstatement

1. *Definition.* Re-employment of a former employee in a position after a break in service (defined as thirty-one calendar days) or re-employment of an employee returning to work from leave without pay (LWOP).

2. *Salary Eligibility.* Salary shall be set based on application of all pay factors. Reinstatement from LWOP to the previous position shall be at the previous salary, unless a higher rate is justified with applicable legislative salary increases awarded by the NC General Assembly, subsequent band revision adjustments, or current internal pay alignment.

F. Reassignment

1. *Definition.* Employee movement from one position to another with a lower competency market rate, or movement to a position with a lower competency level within the same banded classification, achieved through a competitive recruitment process or an approved waiver of recruitment.

2. *Salary Eligibility.* Salary shall be based on application of all pay factors. If the employee's current salary exceeds an appropriate rate based on pay factors, then the salary may, but is not required to be, maintained; regardless, the salary cannot exceed the maximum of the classification pay band.

VI. SALARY ADJUSTMENT ACTIONS

A. Acquired Competencies

1. *Definition.* A salary increase for an employee within the pay band and competency level of the employee's classification due to documented changes in the competencies of the employee that result in increased demonstration of ability to meet the applicable business needs within the same overall competency level, such as acquisition of a position-related degree, licensure, or certification, or participation in a substantial and substantive professional development opportunity or program relevant to the position's duties.

2. *Salary Eligibility.* Salary shall be based on application of all pay factors. Changes to the employee's competencies should be documented in the salary adjustment form in relation to the competency categories defined in the applicable Competency Profile. Attention should be made in particular in the salary justification to internal pay alignment and the documented competencies of similarly situated employees within the defined work unit or School/Division and applicability of the newly acquired competencies to the required work within the position.

B. Demotion

1. *Definition.* Change in classification and/or salary due to disciplinary action as defined in the SHRA Disciplinary Action Policy. A demotion may include:

   a. Employee movement within the same banded classification to a lower competency level, with or without a comparable salary reduction, or
   b. Employee movement to a different banded classification with a lower market rate than the employee's current position, with or without a comparable salary reduction, or
   c. Salary reduction within the employee's current banded classification and competency level.

2. *Salary Eligibility.* A salary reduced by disciplinary action may be less than the appropriate rate based on pay factors. The salary cannot be lower than the minimum of the band and cannot exceed the maximum of the band.

C. Internal Pay Alignment (Pay Equity Adjustments)

1. *Definition.* A salary increase due to an employee salary that is significantly lower than other employees in the same branch/role and competency level with commensurate competencies or a salary increase to address salary compression among similarly situated employees.

2. *Salary Eligibility.* Salary shall be based on the application of all pay factors.

D. Labor Market Adjustment

1. *Definition.* A salary increase to better align an employee salary with the appropriate market rate.

2. *Salary Eligibility.* Salary shall be based on application of all pay factors.

E. Pay Band Revision

1. *Definition*. Any change in a pay band as a result of routine or special labor market reviews and approved by the State Human Resources Commission.

2. *Salary Eligibility.* Salaries below the new minimum of the band must be raised at least to the new minimum as soon as practicable based on available funds. If a pay band is adjusted upward, or the band changes due to changes in the labor market, and if there are no performance or personal conduct issues involved for the employee:

   a. The employee's salary shall be increased to the minimum for the new range as soon as possible and within funding limitations. If the increase was denied because of disciplinary or performance appraisal reasons, the increase may be provided on a current basis if/when the issue is resolved.
   b. The existing employee's salary must be increased to the range minimum before the institution brings on any new employees in the same job classification who are similarly situated and who would be paid more by being paid at the range minimum.

   All other increases are discretionary and shall be based on the application of all pay factors.

F. Reallocation (Reclassification)

1. *Definition*. Documented change in duties and responsibilities within a position that results in significant changes to position duties and/or competency requirements, which are better associated either with (a) a different overall competency level within the same banded classification or (b) a different banded classification with a higher or lower market rate, resulting from human resources review and analysis of an updated position description.

2. *Salary Eligibility.* Salary shall be based on application of all pay factors. If the employee's current salary exceeds an appropriate rate based on pay factors, then the salary may, but is not required to be, maintained; regardless, the salary cannot exceed the maximum of the classification pay band.

G. Retention Adjustment

1. *Definition.* A salary increase not covered by other pay administration policies that may be necessary to retain a key employee where:

   a. The employee has a documented offer for a comparable position (i.e., not an obvious promotion) outside of the agency,
   b. The employee has given that documentation to the manager,
   c. The employee has a "meets" or higher on their most recent annual performance appraisal and no active written discipline, and
   d. The employee has skills or knowledge that would be difficult to replace.

   The documentation showing the offer does not need to be an offer letter. An offer letter is often issued at the very end of the hiring process once the employee has accepted the new position. Institutions may accept a copy of the posting and an attestation from the employee that they have received or are in the process of receiving/negotiating an offer. Any documentation showing the offer for the position is sufficient to show an employee retention need.

2. *Salary Eligibility.* A retention adjustment may result in an employee's salary being above the appropriate rate based on pay factors. The salary cannot exceed the maximum of the allowable range.

VII. MANAGEMENT RESPONSIBILITIES

A. University Management Responsibilities

1. Notify employees when a career banding action has been approved for their position.
2. Develop career development plans and coaching employees with the goal of the employee contributing to organization's success based on business needs.
3. Apply the pay factors appropriately and equitably in determining employee pay and determining a pay philosophy based on available funding, internal pay alignment, relative competencies, recruitment environment, and funding priorities in alignment with the institution's Salary Administration Plan.
4. Regularly monitor, assess, and address internal pay alignment based on appropriate pay factors.

B. University Human Resources Responsibilities

1. Establish and maintain an institutional Salary Administration Plan consistent with policy and guidance from the UNC System Office.
2. Provide initial and continued training for all managers in career banding.
3. Provide technical support for managers making compensation decisions.
4. Require and review documentation of each compensation decision describing how relevant pay factors are applied in making the compensation decision.
5. Hold managers accountable for providing career development assistance and the correct and equitable use of the pay factors in making compensation decisions through use of the performance management and disciplinary processes as outlined in state policy.
6. Provide regular auditing of compensation decisions for the appropriate application of pay factors.
7. Provide pay-related information to UNC System HR upon request.

C. UNC System Office Human Resources Responsibilities

1. Provide training resources and consultation to university human resources staff.
2. Provide salary administration guidelines and procedures.
3. Develop a data system and design tools to evaluate and monitor the career banding program, to include: salary decisions; internal pay alignment; data supporting market rates, documentation relating to employee competencies, experience, and training; demographic distribution of employee actions via occupation, division, and organization.
4. Review salary actions that exceed institution-level authority.
5. Conduct regular pay band market studies to reassess and realign as necessary salary ranges for career-banded classifications.
6. Develop a self-assessment program and require that universities periodically conduct self-audits and report the results to UNC System Human Resources.

7. During the period of expanded delegated authority, administer policy, procedure and outcomes that are consistent with OSHR's Pay Administration policy and goals.

D. Office of State Human Resources Responsibilities

1. Provide oversight and guidance focused on alignment between the state agency system and the UNC system and/or employees who are subject to the North Carolina Human Resources Act.
2. Review career-banding salary administration policy revisions, competency profiles and changes to pay bands.
3. Develop and grant delegation of authority to the UNC System Office Human Resources.[1]
4. Review exceptions to the Office of State Human Resources' policies and delegation of authority.

E. State Human Resources Commission Responsibilities

1. Review and approve career-banded classification pay bands.
2. Review and approve career-banded job families, branches, and roles (banded classifications).
3. Review and approve career-banding salary administration policy and revisions.
4. Review and approve pay band revisions based on labor market findings.

[1] State Agency Hiring, Pay and Classification Flexibility Pilot During 2023-2025 Biennium currently applies.

CAREER BANDING SALARY ADMINISTRATION
SUMMARY OF REVISIONS

12-01-02	New Career Banding Salary Administration Policy (Approved by SPC at teleconference 11/21/02)
05-01-03	Added Agency Responsibilities, OSP Responsibilities and SPC Responsibilities, which were inadvertently omitted.
11-01-05	Changed guidelines for Salary Eligibility for Promotions and Demotions as approved by the October State Personnel Commission.
11-01-05	Additional revisions to Career Banding as follows: 1. Added Advisory Notes regarding the Salary Adjustment Fund. 2. Merged ten existing pay factors under four pay factors, and provide definitions. 3. Established provisions for Horizontal Transfer (currently included in Reassignment) and for Retention Adjustment. 4. Clarified that option with reassignment to maintain current salary above appropriate rate based on pay factors is applicable only if action is not by choice of employee. 5. Indicated when career progression adjustment may be applicable, and clarified that employees with warnings/disciplinary actions or below good/unsatisfactory performance ratings are not eligible. 6. Deleted provision concerning Shift Premium Pay since the grade equivalency is no longer applicable for that.
07-01-07	(1) Broadened the definition of promotion to include employee movement from one position to another with the same banded classification with a higher competency level. (2) Added definitions for Reinstatement and Reallocation and redefined Reassignment, Demotion and Horizontal Transfer. (3) Clarify that salaries below minimum at implementation must be adjusted to minimum when funds become available and may be retroactive (4) Added provision for Effective Date (5) Deleted Advisory Note about Salary Adjustment Fund.
10-01-08	(1) Policy statement revised to remove reference to “promoting successful work behaviors. (2) Band Revision added as an action.

	Statement added to each action that the agency must submit written justification to the OSP for review and approval prior to implementing a salary increase of 20% or more
01-01-2015	• Addition of definitions for “Market Index” and “Market Rate”. • Clarification was added on a new hire action definition to clearly indicate that it is an initial hire to “State” employment. • Definitions for personnel actions such as promotion, reassignment, transfer, demotion, and reallocation are all being redefined to better reflect change in market. • Definitions have been added for the different types of Career Progression Adjustments to include Competency/Skill; Competency Level Change; and Labor Market. • Changed the “Retention Adjustment” section to mirror eligibility criteria for retention adjustment for employees in graded positions. • Removed all reference to career banding implementation including the requirement for agencies to develop a Career Banding Salary Administration Plan. • Reference to the “dispute resolution process” has been deleted and all grievances related to pay decisions will be handled through the agency employee grievance process. Removed the requirement for agencies to have an employee advisory committee to review implementation and operation of the program

Certified Public Manager Program Policy

Contents:

§ 1. North Carolina Certified Public Manager Program Administration

The State of North Carolina shall provide competency-based training for mid-level managers through the North Carolina Certified Public Manager Program (CPMP).

The North Carolina Certified Public Manager Program is a joint effort of North Carolina State Government and The University of North Carolina System. The program shall be based in and administered by the Office of State Human Resources.

§ 2. Purpose

The North Carolina Certified Public Manager Program shall provide participants with practical training that will increase their managerial performance in public sector organizations. The ultimate goal is to impact the efficiency and productivity of state government operations.

The focus of the program shall be upon middle managers employed in various state agencies.

§ 3. Accreditation

The North Carolina Certified Public Manager Program shall be conducted in full compliance with the curriculum requirements and program accreditation standards specified by the National Certified Public Manager Program Consortium.

Certified Public Manager Program Policy

§ 4. Curriculum

The program consists of the series of courses, and assignments associated with these courses. The program requires course attendance and demonstrated ability to apply learning. Agencies are responsible to ensure the participant's availability for all activities associated with the program.

§ 5. Participation

The North Carolina Certified Public Manager Program Director shall design and implement a process that allows each agency an equitable opportunity to participate in the North Carolina Public Manager Program. Agency management shall be responsible for initial selection and recommendation of applicants; the Office of State Human Resources shall approve participation for those applicants who meet prerequisite requirements.

The employing agency and the North Carolina Public Manager Program Director shall keep the following records of each participant in the employee's personnel file: the completed application form, agency approval, and program accomplishments.

§ 6. Certification of Completion

A certificate of completion will be awarded to participants of the Certified Public Manager Program upon completion of established requirements. Record of program participation shall become part of the employee's personnel file.

§ 7. Funding for the Program

Unless fully funded by the General Assembly, funds for the operation of the CPMP shall be derived from fees charged to agencies for approved participants. Fees shall be based on actual costs of development, instruction, materials and administration.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

It is compliant with the Administrative Code rules at:

- 25 NCAC 01K .0700

Certified Public Manager Program Policy

§ 9. History of This Policy

Date	Version
February 1, 1982	• Policy on Public Manager Program adopted.
December 1, 1984	• Amended section on fees for the PMP. Since appropriation was ma OSP for PMP, we will not assess the agencies; but policy still allows assessments if necessary.
December 1, 1995	• Revised to update program provisions.
December 15, 2019	• Revised to update to include change (2016) to program name to Certified Public Manager and edit text for clarification.

Civil Leave and Job-Related Proceedings Policy

Contents:

§ 1. NON-JOB RELATED CIVIL LEAVE POLICY

§ 1.1. Policy

Leave with pay is provided to employees when serving on a jury or when subpoenaed as a witness. It is the responsibility of the employee to inform the supervisor when the duty is scheduled and the expected duration.

§ 1.2. Covered Employees

Employees with a full-time or part-time (half-time or more) permanent, probationary, or time-limited appointment are covered for non-job related civil leave.

Employees with a temporary, intermittent or part-time [less than half-time] appointment are not eligible for non-job related civil leave but are eligible for job-related civil leave and other job-related proceedings.

§ 1.3. Jury Duty

An employee who serves on a jury is entitled to:

- leave with pay,
- regular compensation, and
- fees received for jury duty.

The employee:

Civil Leave and Job-Related Proceedings Policy (cont.)

- should report back to work as soon as jury duty is completed, and • must report back to work the day following completion of the duty.

Note: If jury duty occurs on a scheduled day off, the employee is not entitled to additional time off. Time on jury duty is not included in total hours worked per week.

Shift Employees

When a second shift employee serves on a jury, the employee will not be required to work on the day that jury duty occurs. When a third shift employee serves on a jury, the employee will not be required to work the third shift that begins on the day prior to the day that jury duty occurs. This applies to all employees, regardless of the length of the shift.

§ 1.4. Court Attendance

When an employee is subpoenaed or directed by proper authority to appear as a witness, the employee may choose one of the following options:

Option 1

- charge no leave, and
- turn fees received in to the agency
- retain any fees received

Option 2

- use vacation leave, and

In either case, the time is not considered as work time and is not included in the total hours worked per week.

Advisory Note: An employee who is a party (plaintiff or defendant) in a court procedure is not considered as a “witness”; therefore, vacation leave must be used, or leave without pay, for purpose of attending court.

§ 2. JOB-RELATED CIVIL LEAVE AND OTHER JOB-RELATED PROCEEDINGS

§ 2.1. Policy

Leave with pay is provided to an employee to attend court or a job-related proceeding in connection with official job duties.

Civil Leave and Job-Related Proceedings Policy (cont.)

§ 2.2. Employees Covered

In addition to employees with a full-time or part-time (half-time or more) permanent, probationary, or time-limited appointment, an employee with a temporary, intermittent or part-time (less than half-time) appointment is also included.

§ 2.3. Court Attendance – Official Duties

When an employee attends court in connection with official duties:

- no leave is required, and
- fees received as a witness shall be turned in to the agency.

Note: If court is on a day that is normally an off-day, the time is working time and included in the total hours worked per week.

§ 2.4. Shift Employees

When a second or third shift employee is required to attend court or a job-related proceeding in connection with official job duties, management shall determine the amount of time off regular duties as may be necessary.

§ 3. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1000

§ 4. History of This Policy

Date	Version
December 1, 1951	• When an employee serves on a jury, he shall be entitled to leave with pay for such • duty and for such period of required absence. He shall be entitled, also, to his

Civil Leave and Job-Related Proceedings Policy (cont.)

	• regular compensation plus the compensation or fees received for jury duty. • Court Attendance - Official Duties - no leave required. Fees to be turned in to • State. • Private Litigation Witness - employee must take annual leave or leave without pay - • keeps fee. • Witness for Federal or State Government - when subpoenaed, does not take leave • but shall turn in fees. If employee takes leave, may retain fees.
November 8, 1974	• Civil leave allows employers to grant employees civil leave with pay subpoenaed to appear as a witness in private litigation the same as subpoenaed to appear as a witness for the government.
December 1, 1983	• Added policy for jury duty for shift employee.
December 1, 1995	• Other Job related proceedings added.
September 7, 2017	• Policy revised to delete all references to trainee appointments, per appointment types and career status.

Communicable Disease Emergency Policy

Contents:

§ 1. Purpose

This policy supersedes the Emergency Closing policy when a State of Emergency is declared to be in effect for purposes of a public health emergency. The purpose of this policy is to outline provisions covering the human resources areas listed below when a state of emergency is declared by the Governor or by a resolution of the General Assembly involving a public health such as a communicable disease or condition (*e.g.* pandemic influenza) or other serious public health threat. Portions of this policy related to employee leave may apply, even if a state of emergency has not been declared, if the State Health Director or a local health director institutes control measures in response to a communicable disease or condition or other public health threat, such as quarantine or isolation orders, impacting on an employee's duties.

During a public health emergency, certain essential operations of the state must continue, and certain employees may be required to report to a specific worksite (even when all other employees are restricted from coming into the workplace) at the discretion of the agency head to meet the constitutionally and statutorily mandated responsibilities of state entities.

The goal of the policy is to minimize transmission of a communicable disease while ensuring that all essential state agency services remain operational. This policy outlines the

Communicable Disease Emergency Policy (cont.)

provisions covering compensation and leave for employees in response to a communicable disease or condition, or other public health threat

§ 2. Definitions

Epidemic: A disease occurring suddenly in a community, region or country in numbers clearly in excess of normal. This includes the occurrence of several cases of a disease associated with a common source.

Pandemic: The worldwide outbreak of a serious communicable disease in numbers clearly in excess of normal.

Incubation period: The time, usually in days, between exposure to an illness and the onset of symptoms.

Isolation: A control measure issued by a local health director or the state health director under G.S. § 130A-145 limiting the movement or action of persons or animals infected or reasonably suspected to be infected with a communicable disease or condition for the period of communicability to prevent the spread of the communicable disease or condition, as described in GS 130A-2(3a).

Quarantine: A control measure issued by a local health director or the state health director under G.S. § 130A-145 limiting the movement or action of persons or animals who have been exposed to or are reasonably suspected of having been exposed to a communicable disease or condition for the period of time necessary to prevent the spread of the communicable disease or condition, as described in G.S. § 130A-2(7a).

Mandatory Employees: Employees with permanent, probationary, or time-limited appointments who are required to report to a designated worksite (particularly when all other employees are restricted from coming into the workplace), other than their personal residence, and only for those specific dates and times that such onsite reporting is required during a public health emergency. These mandatory employees include, but are not limited to, employees in positions that directly impact public health and patient care; public safety; operation of critical infrastructure and facilities; operation and safety of sensitive research labs and ongoing care for research animals, and the custody or care of persons or property for whom the state has a duty to continue to serve.

Social Distancing: Actions taken to reduce the opportunities for close contact between people in order to limit the spread of a disease.

Communicable Disease Emergency Policy (cont.)

High Rish Employees: Those employees in a certain age group or who have serious underlying medical conditions and might be at higher risk for severe illness from a communicable disease as identified by the Centers for Communicable Diseases or NC DHHS Division of Public Health.

§ 3. Responsibility for Closings

Under the North Carolina Emergency Management Act, the Governor and the General Assembly have the authority to declare a state of emergency, including a state of emergency based on threats posed by communicable diseases or conditions.

During a state of emergency, the Governor has broad powers to issue emergency orders to protect the public health and safety, including orders to close a State facility or workplace. Isolation and quarantine are public health control measures. Under state public health law, the State Health Director and local health directors have specific authority to order isolation or quarantine when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

In the absence of such orders, the agency head shall consult with local/State Public Health officials to determine the severity of the individual situation and to determine what actions shall be taken (including the closure of the agency or university, by facility or location). Each state agency will comply with and adhere to any control measures, other orders, or instructions from State or local public health agencies to prevent transmission of a communicable disease. Management and employees shall follow NC Division of Public Health's guidelines, when deciding how to inform employees and employees shall inform management of any evidence of a communicable disease that could seriously endanger the health of others in the workplace, and management shall immediately notify the local public health department. Agencies have the flexibility to define this protocol within their continuity of operations plan guidelines

Note: The most recent list of reportable diseases as established by the NC Commission for Public Health is found in the Administrative Code 10A NCAC 41A .0101. The list is constantly updated as new diseases emerge. G.S. § 130A-141.1 also authorizes the State Health Director to issue a temporary order requiring health care providers to report symptoms, diseases, conditions, or other health-related information when necessary to

Communicable Disease Emergency Policy (cont.)

conduct a public health investigation or surveillance of an illness, condition, or symptoms that may indicate the existence of other communicable diseases or conditions that present a danger to the public health.

§ 4. Possible Actions during a Pandemic

During a communicable disease outbreak, any of the following may occur:

- closing of one or more agencies or parts of an agency by order of the Governor,
- closing of an agency or parts of an agency by order of the State or Local Public Health Director,
- closing of an agency or parts of an agency by agreement between the State or Local Public Health Director and an agency authority,

Note: The University President or their designee may close the University of North Carolina or any of its constituent or affiliated institutions, by facility or location, immediately, pending final communication with Public Health officials

- decision by the agency authority that an employee(s) should stay away from the workplace until symptoms have gone,
- isolation of an ill or symptomatic employee(s) by the State or Local Public Health Director pursuant to G.S. § 130A-2(3a), or
- quarantine of an exposed or potentially ill employee(s) by the State or Local Public Health Director pursuant to G.S. § 130A-2(7a).

The authority for public health isolation, quarantine, and other communicable disease control measures resides with the State Health Director and/or the Local Health Director (G.S. § 130A-145) in the county of residence or their designees.

§ 5. Social Distancing

In order to minimize transmission from person to person, each agency should have in place a Social Distancing Policy to implement immediately upon orders from the Governor and/or Public Health officials. Social distancing is designed to limit the spread of a disease by reducing the opportunities for close contact between people. It can be accomplished by administrative and engineering controls.

Examples include:

Communicable Disease Emergency Policy (cont.)

- maintaining sufficient distance between individuals to reduce risk of transmission of a communicable disease as defined by the Centers for Disease Control or DHHS;
- reducing face-to-face exposure by using conference calls and video conferencing;
- avoiding unnecessary travel;
- canceling in-person meetings, workshops, training sessions and scheduled events;
- allowing employees to work from home or alternative worksites to reduce exposure in the workplace;
- establishing flexible working hours to avoid mass transportation, at least during peak hours;
- installing protective barriers between workstations or increasing space between workers;
- reinforcing hand washing and requiring the use of protective equipment such as hand sanitizers and masks (provided by the agency);
- scheduling employees in staggered shifts;
- controlling access to buildings; and
- requiring asymptomatic individuals traveling to affected countries/areas not to return to work until one incubation period has passed after returning home.

An agency may choose to practice social distancing by use of alternate worksites or teleworking. Agency heads are authorized to establish immediate telework arrangements, bypassing the normal requirements, as outlined in the agency internal teleworking policy and procedures, during the declared emergency. Employees shall track time worked, leave taken and notify their supervisor of the work being performed as if they were physically working in the office. Employees required to telework shall receive regular pay.

§ 6. Mandatory Employees

Each agency head shall predetermine and designate mandatory operations and designate the employees to staff these operations.

Mandatory employees may be excused from work if they are quarantined or ill, if they are required to care for a member of the immediate family who is quarantined or ill or if they are a parent (or guardian) who is required to stay home with underage children because of the closure of a day care facility, public school or eldercare facility.

Communicable Disease Emergency Policy (cont.)

The agency shall maintain a list of mandatory employees by position, including current employee name and contact information. The agency head shall develop an alternative plan for personnel in case the designated personnel are unable to work. Alternative workers may include current employees who are not designated as mandatory but who possess the skills to fill in for mandatory employees, retirees, contract workers or other temporary employees. This will be especially important in a pandemic that may last for several weeks or months.

Employees designated as mandatory personnel shall be notified of such designation and the requirement to report for, or remain at, work in emergency situations. If mandatory personnel are required to remain at the worksite for an extended period of time, the agency or university will provide adequate housing and food. The fact that an employee remains on the employer's premises for 24 hours a day does not mean that the employee is entitled to receive pay for all those hours. Employees shall have a normal night's sleep and ample eating time and this time is not considered as hours worked. As a rule, allowance for 8 hours sleep and 3 hours for meal periods might be reasonable.

§ 7. Failure of Mandatory Employees to Report

Individuals designated as mandatory employees may be subject to disciplinary action, up to and including termination of employment, for willful failure to report for or remain at work. Each situation will be reviewed on a case-by-case basis to determine appropriate action.

§ 8. Compensation of Mandatory Employees

When an agency is closed or when management determines that only mandatory employees are required to report to a specific worksite (particularly when all other employees are restricted from coming into the workplace), the mandatory employees may be granted additional pay up to 1.5 or an equivalent ratio in compensatory time for hours worked onsite up to 40 hours in a work week. It is the agency head's discretion to determine appropriate options based on the availability of funds, operational needs of the agency and in consideration of the duties being performed. Compensatory time must be used within 24 months of it being awarded, or it will expire. Agencies shall make every effort to give employees the opportunity to take this time off. Compensatory time earned during a public

Communicable Disease Emergency Policy (cont.)

health emergency is not paid out at expiration or upon separation and does not transfer to another State agency. This provision applies to all designated mandatory employees, both exempt and non-exempt under the Fair Labor Standards Act (FLSA).

Advisory Notes:

- HR Payroll System compensation options available to agencies include additional pay at 1.05, 1.1, 1.2, 1.25, and 1.5, or an equivalent ratio in compensatory time for all hours worked onsite.
- Should a FLSA non-exempt employee, designated as mandatory work more than 40 hours in a work week, the compensation noted above is paid in addition to overtime compensation.

Under special and limited circumstances, highly compensated professional and management employees may be granted these special compensation provisions or may be considered for other compensation options with the approval of an Agency Head.

This provision does not include temporary employees under any circumstances. However, at an agency's discretion, temporary employees (including retirees) whose positions support emergency operations may receive a temporarily adjusted higher hourly pay rate while supporting the emergency operations.

Refer to Other Provisions for compensation options an agency may utilize to recognize work performed by other employees specific to the state of emergency.

§ 9. Leave

Management should stress to non-mandatory employees that they will not be penalized for using their leave, thereby encouraging compliance with public health control measures to prevent the spread of disease and also recognizing that employees with ill family members may need to stay home to care for them. To meet operational needs during this public health emergency, mandatory employees must be authorized by supervisors to use leave. In a situation involving a large-scale pandemic, state or federal laws and rules may supersede the guidelines provided herein and may require specific leave allowances that differ from those described below.

Advisory Note: Health care providers or emergency responders (as defined by FFCRA) may be excluded from receiving leave identified under the Emergency Paid Sick

Communicable Disease Emergency Policy (cont.)

Leave Act (EPSLA) or the Emergency Family and Medical Leave Expansion Act (EFMLEA). An Agency Head or University Chancellor has the discretion to grant full or partial FFCRA leave.

§ 9.1. Isolation by a Public Health Official

When an employee is isolated by a public health official or is ill, the employee shall follow the Sick Leave Policy unless the State Human Resources Director has authorized agencies to provide specific State of Emergency Leave for employees (which may include employees with temporary appointments), subject to the availability of funding. If state or federal rules specify that paid emergency leave shall be given to employees, the paid state of emergency leave authorized by the State Human Resources Director may be applied to meet this requirement, if applicable.

§ 9.2. Quarantined or other Control Measures by a Public Health Official

When an employee is quarantined, the employee shall be granted Administrative Leave – CDE until the specified period of time ends or the employee becomes ill or is isolated by a public health official, whichever comes first. The maximum amount of Administrative Leave – CDE that may be granted to an employee will be 80 hours during a declared state of emergency. This shall include employees with temporary appointments.

§ 9.3. Employee is Required by the Agency to Stay Home

If agency management believes that an employee has symptoms associated with a communicable disease, management may require the employee not to report to work and to use any available compensatory leave, sick leave, vacation leave or bonus leave.

In response to a severe public health emergency, the State Human Resources Director may authorize paid state of emergency leave that agencies may grant to employees who experience symptoms associated with a communicable disease. If state or federal rules specify that paid emergency leave shall be given to employees, the paid state of emergency leave authorized by the State Human Resources Director may be applied to meet this requirement, if applicable. This may be extended to temporary employees, subject to the availability of funding.

Communicable Disease Emergency Policy (cont.)

When an Agency is Closed or only Mandatory Employees are Required to Report to a Specific Worksite (particularly when all other employees are restricted from coming into the workplace)

Although all efforts should be made to allow non-mandatory employees to telework or work from an alternative location, it may not always be possible. Non-mandatory employees who are not able to telework or work from an alternative location may be granted paid State of Emergency Leave by the agency if such leave is authorized by the State Human Resources Director. This leave may be extended to temporary employees, subject to the availability of funding. The employee's pay shall continue at the same rate the employee would have received had the employee been working (including any shift premium pay normally received). In the absence of State of Emergency Leave, employees may use accrued vacation, bonus, compensatory time or take leave without pay. If authorized by the agency head, employees may be advanced leave or allowed to make up time in accordance with the parameters for making up time during adverse weather. The agency may extend the make-up time to 24 months if necessary. If a non-mandatory employee is required to telework or work from an alternative location, the employee shall not receive additional pay.

Employees who are on prearranged leave shall charge leave to the appropriate account until the end of the scheduled days off, unless there are extenuating circumstances. Also, employees on leave without pay shall continue on leave without pay until the scheduled leave without pay period ends, unless there are extenuating circumstances.

§ 9.4. If an Employee becomes Ill

If the employee becomes ill and it is determined to be work related in accordance with the Workers' Compensation Act, the Workers' Compensation Policy applies. If the employee's illness is determined not to be work related in accordance with the Workers' Compensation Act, the Sick Leave Policy applies, unless otherwise covered by State of Emergency leave options. The provisions of the Family and Medical Leave Policy and the Family Illness Leave Policy shall also apply, as appropriate.

Advisory Note: Should an employee not have sufficient sick leave available; the agency shall advance the employee a reasonable amount of leave or make arrangements

Communicable Disease Emergency Policy (cont.)

for the employee to make up the time if the agency determines that the work situation will allow it. Time must be made up within 24 months from the occurrence of the absence. If it is not made up within 24 months, the appropriate leave shall be charged, or leave without pay.

Employees who have symptoms of a communicable disease and are required to stay home or who are ill with the communicable disease should be cautioned not to return to work until they are sure that they are fully recovered, in accordance with CDC or NC Division of Public Health guidelines.

Agencies may require certification of fitness to work from a health care provider. Agencies may require certification of fitness to work from a health care provider.

§ 9.5. Returning to Work

Depending upon the severity of the public health emergency, employees may be unable to obtain a healthcare provider's note; therefore, Agencies shall follow the recommended guidelines from the Centers for Disease Control or local Public Health Department before allowing employees to return to work.

§ 9.6. Expanded Community Service Leave

During a communicable disease emergency, the State Human Resources Director may expand Community Service Leave days to help meet human services needs typically filled by non-profits. The amount of leave and parameters of expanded Community Service Leave will be specific to that particular communicable disease emergency event.

§ 9.7. If an Employee must Care for an Ill Family Member

An employee who is caring for an individual who: (a) is subject to a quarantine or isolation order from a public health official, or (b) has been advised by a health care provider to self quarantine due to concerns related to a communicable disease emergency may by granted State of Emergency Leave (if authorized) or use any available compensatory leave, sick leave, vacation leave or bonus leave.

Communicable Disease Emergency Policy (cont.)

§ 10. Day Care or Public and Private School Closings/Elder Care

If an employee, who is a parent (or guardian), is required to stay home with a child (as defined in the FMLA) because of the closure of a day care facility or public/private school, the employee may, with approval of the supervisor, be allowed to work at home or elect to:

- use State of Emergency leave (if authorized by the State Human Resource Director and granted by the Agency Head),
- use vacation leave,
- use bonus leave,
- use sick leave,
- use compensatory leave,
- take leave without pay, or
- make up time in accordance with the parameters for making up time during adverse weather. The agency may extend the make-up time to 24 months if necessary.

This also applies for eldercare facility closing.

§ 11. Review of Policy Provisions

If any public health emergency exceeds 30 days, the leave and compensation provisions of this policy shall be reviewed, and revised, as applicable. The State Human Resources Director shall determine the appropriate course of action, in consultation with the Governor's Office, and the State Budget Director.

Pending a decision on renewing these provisions, the employee may be allowed to take leave (compensatory, sick, vacation, bonus), if available, until a decision is made. If leave is not available, leave shall be advanced and paid back within 24 months.

Advisory Note: For additional information about communicable diseases, surveillance and reporting, disease laws and rules, and public health preparedness and response, please refer to the OSHR website for links to the NC Division of Public Health and US Department of Labor.

https://oshr.nc.gov/policies-forms/workplace-wellness/communicable-disease-emergency

Communicable Disease Emergency Policy (cont.)

§ 12. Emergency Layoff

An emergency layoff is a temporary separation from payroll because funds are not available, work is not available or because of another emergency situation requiring employees to remain away from the worksite. The employer believes that the condition will change and intends to recall the employees as soon as feasible.

An emergency lay-off may be declared if the agency remains totally closed or partially closed for an indefinite period of time due to the public health emergency. The agency head shall make this decision after consultation with the Governor's Office and the State Budget Director.

During an emergency layoff, employees who are laid off are entitled to participate in the State Health Plan. State agencies shall pay the employer contribution. The agency may also pay the employee contribution for the month following the layoff, with the provision that the employees shall repay the State for any contribution made on their behalf.

An employee shall not be paid for leave at the time of the emergency lay-off; however, vacation and sick leave will continue to accrue during the lay-off to be credited to the employee's account upon return from the lay-off. If a reduction-in force should occur before the employee returns, the vacation leave accumulated while on lay-off shall be paid along with other unused vacation/bonus leave that was on hand at the time of the layoff.

An employee will continue to receive total State service while on an emergency lay-off.

An employee may be eligible for unemployment benefits with the North Carolina Employment Security commission while on an emergency lay-off. Employees should contact the North Carolina Employment Security Commission for further details.

§ 13. Other Provisions

§ 13.1. Hiring

During the communicable disease outbreak emergency, if new hires are needed to cover emergency operations, the agency head is authorized to execute the immediate hiring of an individual who is determined to be qualified and able to do the work by:

- waiving the posting policy,

Communicable Disease Emergency Policy (cont.)

- posting positions with the provision that the hiring authority does not have to wait until the closing date to make job offers,
- waiving the minimum qualifications policy, and
- waiving the hiring of relatives (nepotism) policy.

A time-limited permanent appointment may be extended per the appointment policy up to 30 days beyond the duration of the State of Emergency.

The agency head is also authorized to offer competitive salaries for the duration of the emergency.

§ 13.2. Employee Reassignments

The agency head is authorized to assign employees where they are most needed and compensate them accordingly for the duration of the emergency.

§ 13.3. Compensation during a Public Health Emergency

An agency head may grant a bonus or an acting promotion or temporary in-range salary adjustment for employees in positions that are deemed directly related to the public health emergency operations. Acting promotions and temporary in-range salary adjustments made during this period are on an interim basis and will continue no longer than 30 days following the end of the public health emergency.

§ 14. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5); (10)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01N .0400

§ 15. History of This Policy

Date	Version
December 1, 2007	• New Policy for use in case of a communicable disease pandemic.
June 1, 2008	• Provision added to allow the University President or his designee to the University of North Carolina or any of its constituent or affiliated

Communicable Disease Emergency Policy (cont.)

	institutions immediately, pending final communication with Public H officials.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointment types and career status.
March 30, 2020	• Policy temporarily revised due to COVID-19 pandemic and State of Emergency leave placed into effect. Subject to future revisions as needed due to the COVID-19 pandemic.
April 28, 2020	• Updated re: Pandemic.

Community Service Leave Policy

Contents:

§ 1. Policy

In recognition of the State's interests in supporting its employees who wish to volunteer

in schools, communities, institutions of higher education, State agencies, and not-for-profit organizations, and recognizing the commitment of State employees to engage in volunteer service, Community Service Leave, within the parameters outlined below, may be granted to:

- parents for involvement with their child in the schools (as defined below)
- any employee for volunteer activity in the schools (as defined below); or
- any employee for volunteer activity in a not-for-profit Community Service Organization (as defined below), or
- any employee for volunteering in a State of North Carolina Public University, Community College System or State agency provided that the service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.

In addition, there are special provisions for granting Community Service Leave to:

- any employee for tutoring and mentoring in public or private schools, or
- any employee to volunteer in a literacy program in any public school.

Community Service Leave Policy (cont.)

§ 2. Definitions

Following are definitions of terms used in this policy:

Terms	Definition
Community Service	The act of supporting citizens of North Carolina through volunteer service.
Volunteer	A person who willingly chooses to perform hours of service for civic, charitable or humanitarian reasons without promise or expectation of compensation for services provided.
School (public or private)	An organization that is authorized to operate under the laws of the State of North Carolina and is: • an elementary school, • middle school, • high school, or • a licensed childcare program. Advisory Note: For employees who live in a state adjacent to North Carolina or have a duty station in a state other than North Carolina, the agency may grant community service leave for involvement in the child's school.
Public University	An educational institution that is a member of the North Carolina Community College System.
Community College	A constituent institution of the University of North Carolina
State Agency	A State government agency that is authorized to operate under the laws of the State of North Carolina.
Community Service Organization	A not-for-profit, non-partisan community organization designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited to

Community Service Leave Policy (cont.)

	serve citizens with needs including children, youth, and the elderly. Advisory Note: Although religious organizations may be 501(c)(3) agencies, this leave does not apply to activities designed to promote religious beliefs.
Child	A son or daughter who is: • a biological child, • an adopted child, • a foster child • a stepchild, • a legal ward, and • a child of an employee standing in loco parentis.

§ 3. Covered Employees and Credits

With approval of the supervisor, an employee is eligible for Community Service Leave as follows:

Type of Appointment	Amount Granted
Full-time - permanent, probationary, or time-limited	24 hours per calendar year* See special provision (Section 5, Page 18.3) options for volunteering in a literacy program or tutoring/mentoring.
Part-time (half time or more) – permanent, probationary, or time limited	Prorated proportionately to percentage of full-time equivalent for the position. Example, an individual with a half-time appointment is eligible for 12 hours per calendar year.
Temporary, intermittent, or part-time (less than half-time)	None

*The twenty-four hours (24) of paid leave shall be credited to each employee on January 1 of each year, unless the employee chooses one of the special provision options for volunteering in a literacy program or tutoring/mentoring.

Community Service Leave Policy (cont.)

Newly hired employees shall be credited with leave immediately upon their employment, prorated at two hours per month for the remainder of the calendar year. Separated employees that are re-employed within the same calendar year are credited Community Service Leave the same as newly hired employees; however, the combination of re- employment credit hours and total hours used prior to separation in the same calendar year cannot exceed the annual 24-hour maximum leave benefit.

§ 4. Changing Options

If an employee chooses to change options from regular Community Service Leave to the special provisions for volunteering for the literary program or tutoring/mentoring or vice versa, during the calendar year, the maximum hours that may be granted is the maximum allowed under the new option chosen minus the amount already used.

§ 5. What is Community Service

Community service, for this purpose, is:

- meeting with a teacher or administrator concerning the employee's child,
- attending any function sponsored by the school in which the employee's child is participating. This provision shall only be utilized in conjunction with nonathletic programs that are a part or supplement to the school's academic or artistic program,
- performing school-approved volunteer service approved by a teacher, school administrator, or program administrator,
- performing a service for a community service organization
- performing volunteer service for a public university** that is approved by a university administrator or other authorized university official,
- performing volunteer service for a community college that is approved by a community college administrator or other authorized community college official, or
- performing volunteer service for a State agency** that is approved by the agency head or his/her designee.

**An individual shall not be considered a volunteer if the person is otherwise employed by a State agency or State university to perform the same type of service as those for which the person proposes to volunteer.

Community Service Leave Policy (cont.)

Notes:

(1) Service does not include activities designed to promote religious beliefs such as teaching or leading religious assemblies or in raising funds to support religious activities. Service would include activities supported by religious organizations such as volunteering in soup kitchens, homeless shelters or other community activities.

(2) Service may include serving inside a polling facility to assist voters with the voting process as long as the employee is not receiving pay for the service. Vacation leave rather than Community Service leave must be used if the employee is receiving pay for the "inside" poll work or if the employee is distributing brochures, transporting voters or other partisan campaigning outside of the polls.

(3) Service for a fundraising event is eligible for Community Service Leave if there is a bona-fide volunteer relationship and the fundraising event is directly sponsored and supported by an eligible community service organization. For example, playing in a golf tournament that is raising money for the American Cancer Society is not considered a volunteer activity that would be eligible for Community Service Leave; however, setting up tents, handling parking and registration, or serving at the food tent at the fundraising golf event would be considered a volunteer activity and would be eligible for community service leave. Volunteering at a fundraising event for an individual citizen or political party is not eligible for Community Service Leave.

(4) Disaster relief service must be performed through a recognized eligible disaster relief organization; example, the American Red Cross.

(5) The ‘child involvement’ provision of the policy is limited to child day care, elementary school, middle school or high school involvement. A parent cannot, for example, use community service leave for on-site visits to colleges for the purpose of selecting a college, or to attend college orientations or assist with moving the child in and out of the on-campus housing, or for attendance at college graduations.

(6) Community Service leave for volunteer service is meant to be used for actual service time. Time spent training to be a volunteer is not covered by Community Service Leave. Also, time spent in administrative duties such as attending organization meetings, electing officials, or attending social events sponsored by an organization shall not be covered by Community Service Leave.

Community Service Leave Policy (cont.)

§ 6. Approval of Leave

Employees must receive approval from their supervisor to use this leave. The supervisor or other agency/institution manager may require that the leave be taken at a time other than the one requested, based on the needs of the agency. Leave shall only be requested and approved for community service that occurs during the employee's regularly scheduled hours of work. Agencies with shift employees regularly scheduled to work evening or night shift with a shift schedule in excess of a regular 8 hour shift may allow the use of community service leave in situations where the employee's participation in community service outside of the normal work schedule significantly impacts the employee's normal sleep period.

The agency may require acceptable proof that leave is being utilized in accordance with the purpose of this policy. Reasonable travel time may be included in approved time for community service, but only for the time that intersects the employee's regular work schedule. The majority of the leave shall be used for direct volunteer service.

§ 7. Inter-Agency Transfer

If an employee transfers to another State agency, any balance of community service leave not used shall be transferred to the new agency. Under the tutoring/mentoring option, the employee should secure approval from the new supervisor to continue with that option prior to the transfer.

§ 8. Not Cumulative

Leave not taken by the end of the calendar year is forfeited; it shall not be carried into the next calendar year.

§ 9. Separation

Employees shall not be paid for such unused leave at separation.

Community Service Leave Policy (cont.)

§ 10. Records

The use of Community Service leave shall be reported separately from all other paid leave. Employees and supervisors are responsible for timely and accurately reporting the use of Community Service leave on the employee's time record.

§ 11. Partisan Political Involvement

Partisan political activity during State time and the use of State equipment or property for any community service are not permitted. Special care must be taken to avoid any possible interpretation that the State is, in fact, permitting time off and in so doing supporting a political candidacy. State employees engaging in political activity must do so in accordance with G.S. 126-13 of the Human Resources Act.

§ 12. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5); (5b), (10)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1600

§ 13. History of This Policy

Date	Version
July 1, 2000	• COMMUNITY SERVICE LEAVE POLICY – New Policy April 13, 2000 Governor Hunt signed Executive Order 168. Effective July 1, 2000, until such time as permanent rules are approved, a blanket exception implemented, establishing the Community Service Leave Policy that incorporates the Community Involvement Leave, Child Involvement Leave and Volunteer Participation Leave Policies. The histories of these three policies are as follows: • CHILD INVOLVEMENT LEAVE 1-1-94: New Policy COMMUNITY INVOVEMENT LEAVE

Community Service Leave Policy (cont.)

	2-1-83: Adopted policy on Community Involvement. Provides employees with time off to participate in community affairs and an opportunity to make that time up. 4-1-86: Changed provision for make-up time whereby it constitutes overtime and can only be made up during the same week or in a week when a full schedule is not worked. • VOLUNTEER PARTICIPATIONS LEAVE 12-13-74: Policy adopted to allow time off with pay to participate in emergency and rescue services within a limited area around their workstation. 12-1-87: Changed name of policy from Volunteer Emergency Services and added policy on Blood Donorship. 3-1-90: Add leave for bone marrow transplantation. 4-1-93: Add Disaster Leave per G.S. 166A-30-32. 7-1-95: Revised to include type of appointment of covered employees
September 5, 2000	• Advisory Note added to clarify leave as it relates to religious activities.
September 22, 2000	• Correction to remove the word “public” when referring to schools eligible for using leave for mentoring/tutoring. • Special provision for emergency service revised as provided in HB 231, Sections 23. (a) and 23.(b) that rewrote GS 127A-116 to provide for leave without loss of pay, time or efficiency rating for special emergency management service.
December 19, 2001	• American Red Cross Disaster Service Leave revised to conform to changes in GS-166A-32: • (1) Leave applies to disasters occurring within the United States rather than just North Carolina. • (2) Omitted the word “certified” before “disaster service volunteer.” (Note: The statute still defines “Certified Disaster Service

Community Service Leave Policy (cont.)

	Volunteer; however, the 2001 legislation deleted the word "certified" in 166A-32 which provides leave.)
April 1, 2004	• Add Advisory Note to allow agencies to approve community service leave for employees who live in states adjacent to North Carolina.
August 1, 2004	• (1) Deleted Advisory Note under Emergency Services since the temporary rule providing for wider use of leave for emergency management services has become a permanent rule. • (2) Revised to incorporate leave with pay up to 30 days for organ donation.
January 1, 2008	• Advisory Notes added for agencies using BEACON/HR Payroll System: • (1) If an employee has holiday compensatory time, overtime • compensatory time or on-call compensatory time, it shall be taken before sick leave. • (2) Hours worked in excess of the employee's established work schedule will be used to offset leave reported in the same workweek. Leave will be restored to the employee's balance for later use. • (3) Advisory Note added to clarify that service may include working inside a polling facility to assist voters with the voting process as long as the employee is not receiving pay for the work.
April 1, 2009	• Deletes the Advisory Note about the leave hierarchy since this does not apply to Community Service Leave.
November 1, 2009	• Deleted the following provisions and incorporated them into Other Management Approved Leave: • Emergency Services • Blood, Bone Marrow and Organ Donorship • American Red Cross Disaster Service Volunteer
March 1, 2010	• Added provisions for volunteering for certain activities in a public school or a community service organization. Requires that the

Community Service Leave Policy (cont.)

	service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.
January 1, 2011	• Advisory Note about Leave Offsetting deleted and placed in General Leave Policies.
March 11, 2011	• Deleted reference to blood and bone marrow donation since this is in the Other Management Approved Leave policy.
June 1, 2014	• Policy change required to comply with Senate Bill 402 (Session Law 2013-360) which required the State Human Resources Commission to establish policies and rules governing a leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month. Literacy Leave was added as special provisions to the regular CSL Policy. The existing • tutoring/mentoring provision of the CSL policy was also moved to the special provisions section of CSL. In addition, changes to the regular CSL policy include: • Added a definition for community service and volunteer • Clarified that 24 hours of CSL is per calendar year. • Clarified how to administer CSL for an employee who separates and is re- employed in the same calendar year. • Clarification on volunteer work related to fundraising events • Clarification on disaster relief service. • Clarification on child involvement for college visitation and orientations. • Clarification for volunteer training and administrative service and social events sponsored by organizations. • Clarification that CSL should be requested and approved for service being performed during regular scheduled hours of work. Include an exception for evening and night shift workers when volunteer service outside of normal work hours significantly

Community Service Leave Policy (cont.)

	impacts an employee's normal sleep time. • Clarification that reasonable travel time may be included in approved time for CSL; however, the majority of the leave shall be used for direct volunteer service. • The "agency policy" section was deleted. In addition, the option to allow make-up time for volunteer service in excess of 24 hours was removed. • Policy revised to delete all references to trainee appointments, per appointment types and career status.
September 17, 2017	• Policy revised to delete all references to trainee appointments, per appointment types and career status.

Community Service Leave - Literacy, Tutoring and Mentoring Policy

Contents:

§ 1. Policy

In recognition of the State's interests in supporting its students in compliance with The Excellent Public Schools Act of 2013, special provisions of the Community Service Leave policy (Section 5, pages 13-18) allow an alternate option in lieu of regular Community Service Leave (24 hours) for leave to be granted to:

- any employee to volunteer in a literacy program in a public school; or
- any employee for tutoring and mentoring a student in a formal standardized approved tutoring/mentoring program in a public school or a non-public school.

§ 2. Definitions

Following are definitions of terms used in this policy:

Terms	Definition
School	An organization that is authorized to operate under the laws of the State of North Carolina and is: • an elementary school, • middle school, or • high school
Student	Individual who is enrolled and attends classes at a school authorized to operate in the State of North Carolina.
"At-Risk"	Students than others to fail academically. Students who, by virtue of their circumstances, are more likely

Community Service Leave Leave-Literacy, Tutoring and Mentoring Policy (cont.)

Literacy Program	An education program recognized and supported by the North Carolina Department of Public Instruction to provide instruction in reading and writing

§ 3. Covered Employees and Credits

In lieu of the regular Community Service Leave (24 hours), an employee, with approval of the school and supervisor, may be eligible*** to choose one of the following leave options:

Type of Appointment	Literacy Program	Tutoring/Mentoring
Full-Time - permanent, probationary, or time-limited	Up to 5 hours a month not to exceed 45 hours a calendar year.	One hour a week not to exceed 36 hours a calendar year.
Part-Time (half time or more)	Prorated – equal to percentage of full-time amount.	Prorated – equal to percentage of full-time amount.
Temporary, intermittent, or part-time (less than half-time)	None	None

***Some schools may require volunteers to pass a criminal background check prior to performing any volunteer work.

If approved for this special provision, the annual amount of leave based on the option chosen will be accrued on January 1 of the calendar year, but the employee shall not exceed the monthly/weekly usage restriction. The employee's supervisor shall be responsible for ensuring the employee does not exceed the allowable hours per month/week.

§ 4. Employee Option for Tutoring and Mentoring

In lieu of the twenty-four (24) hour leave award for regular Community Service and in lieu of volunteering for a Literacy Program, an employee may choose to volunteer to tutor/mentor in a public school or non-public school. Leave under this option shall be used

Community Service Leave Leave-Literacy, Tutoring and Mentoring Policy (cont.)

exclusively for tutoring or mentoring an “at-risk” student in accordance with established standards rules and guidelines for such arrangements as determined and documented by joint agreement with the employee’s agency and the public/non-public school.

The amount of community service leave for tutoring/mentoring is one (1) hour of leave for each week, up to a maximum of 36 hours, that schools are in session as documented by the elected board of the local education agency or the governing authority of any charter school or non-public school.

The one hour of leave each week shall be used for tutoring/mentoring an “at-risk” student determined eligible for the tutoring/mentoring program. Time spent in commuting to and from the school and time spent in orientation or volunteer training must be accounted for using other leave policies such as compensatory time or vacation leave.

§ 5. Employee Option for Volunteering for the Literacy Program

In lieu of the twenty-four (24) hour leave award for Community Service and in lieu of volunteering for the tutoring/mentoring program, an employee may choose to volunteer in a literacy program in a public school for up to 5 hours each month not to exceed 45 hours in a calendar year. Leave under this option shall be used exclusively for assisting students in reading and/or writing skills in accordance with established standards rules and guidelines for such arrangements as determined and documented by joint agreement with the employee’s agency and the public school.

The amount of community service leave for the literacy program is up to five hours of leave each month while schools are in session (not to exceed 45 hours a calendar year) as documented by the elected board of the local education agency.

The five hours of leave each month shall be used for assisting a student in reading and/or writing. Time spent in commuting to and from the school and time spent in orientation or volunteer training must be accounted for using other leave policies such as compensatory time or vacation leave.

§ 6. Inter-Agency Transfer for Literacy, Tutoring and Mentoring

If an employee transfers to another State agency, the employee should secure approval from the new supervisor to continue that option prior to the transfer.

Community Service Leave Leave-Literacy, Tutoring and Mentoring Policy (cont.)

§ 7. Not Cumulative

Leave not taken by the end of the calendar year is forfeited; it shall not be carried into the next calendar year.

§ 8. Separation

Employees shall not be paid for any such unused leave upon separation.

§ 9. Sources of Authority

It is compliant with the Administrative Code rules at:

- N.C.G.S. § 126-4(5), (5b), (10)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1600

§ 10. History of This Policy

Date	Version
June 1, 2014	• Policy change required to comply with Senate Bill 402 (Session Law 2013360) which required the State Human Resources Commission to establish policies and rules governing a leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month. Literacy Leave was added as a special provision to the regular CSL Policy. In addition, the existing policy provisions for Tutoring and Mentoring were also moved from regular CSL to be included as a special provision to the regular CSL.
September 7, 2017	• Policy revised to delete all references to trainee appointments, per appointment types and career status.

Compensatory Time Policy

Contents:

§ 1. Policy

Employees that are designated as Administrative, Executive or Professional under the Overtime Compensation Policy are exempt from the provision for overtime pay. FLSA Not Subject employees are not entitled to compensatory time. However, the agency head has the discretion to authorize FLSA Not Subject employees to earn compensatory time and decide how compensatory time should be granted using the following provisions.

§ 2. Covered Employees

Full-time and part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for compensatory time.

Temporary and part-time (less than half-time) employees are not eligible for compensatory time.

§ 3. Amount

Compensatory time is awarded at a rate not to exceed the individual's straight-time equivalent rate.

§ 4. Not Cumulative

Compensatory time is not cumulative beyond a twelve-month period.

§ 5. Not Transferable

Compensatory time may not be transferred to another agency.

Compensatory Time Policy (cont.)

§ 6. Separation

Compensatory time is lost when an employee transfers to another agency or is separated from State service. It is the agency's discretion to authorize FLSA Not Subject employees to exhaust compensatory time prior to a known separation, provided granting of the compensatory time is reasonable and will not adversely affect agency operations or agency employees. The employee's separation date may not be moved forward in order to pay for compensatory time. The separation date must be the last day worked. If an agency allows an employee to exhaust some or all of their compensatory time prior to separation, the employee must still work for at least one day after using compensatory time for the date of separation to occur after the use of the compensatory time.

§ 7. Agency Responsibilities

- Agencies may develop their own policy within these guidelines.
- The agency shall establish proper approval procedures for uses of compensatory time.

As a non-binding best practice, OSHR recommends that ordinarily, short uses of compensatory time would be appropriate for approval by the employee's supervisor, but that the agency's chief deputy or a named designee approve any use of large amounts of compensatory time (for example, one month or longer) prior to a known separation.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1000

§ 9. History of This Policy

Date	Version
September 1, 1954	Dept. head responsible for decision to grant equivalent time off for compensatory leave – not cumulative beyond a 12-month period.

Compensatory Time Policy (cont.)

July 1, 1971	Added reference to the State's overtime compensation policy that designates certain employees as Administrative, Executive or Professional. Employees in these categories are exempt from the provisions for overtime pay.
October 1, 2007	Under the paragraph Amount, added Advisory Note to state that before generating compensatory leave, the BEACON HR/Payroll System will use hours worked in excess of the employee's established work schedule to: • pay back advanced leave liabilities owed to the State, • pay back adverse weather liabilities owed to the State, and • offset paid leave hours reported in the same workweek.
July 1, 2008	Title and all references changed from "compensatory leave" to "compensatory time" to standardize the terminology.
September 7, 2017	Policy revised to delete all reference to trainee appointments, per appointment types and career status.
June 4, 2020	The policy statement was reworded. The explanation of part-time covered employees wording changed from "20 hours" to "half-time").
April 18, 2024	Policy revised to clarify compensatory time for FLSA Not Subject employees is not an entitlement. Also, updated to clarify it is the agency's discretion to allow FLSA Not Subject employees to exhaust compensatory time when there is a known separation. Added that the separation date must be the last day worked. This means if an agency allows an employee to exhaust some or all of their compensatory time prior to separation, the employee must still work for at least one day after using compensatory time for the date of separation to occur after the use of the compensatory time. Added an Agency Responsibilities section.

Creditable Service Policy

Contents:

§ 1. Creditable Service

Three types of service credit are maintained for State employees. Specific uses of each type of service are made for various policy and fringe benefits applications. The types of service credit are:

- Total State Service,
- Continuous State Service, and
- Creditable Retirement Service.

Each of these types is explained below.

§ 2. Total State Service

This service credit is the grand total of all permanent, probationary, and time-limited time, either full-time or part-time (regularly scheduled 20 hours or more each workweek), which an employee has served in State government or other recognized public sector

- Any State agency (subject to or exempt from the State Human Resources Act);
- Employment with other governmental units which are now State agencies (Examples: county highway maintenance forces, War Manpower Commission, Judicial System);
- Authorized military leave from any of the governmental units for which service credit is granted provided the employee is reinstated within the time limits outlined in the State military leave policies;

Creditable Service Policy (cont.)

- Authorized workers' compensation leave from any of the governmental units for which service credit is granted;
- Employment with the county Agricultural Extension Service; Community College System and the public school system of North Carolina, with the provision that a school year is equivalent to one full year (credit for a partial year is given on a month-for-month basis for the actual months worked);
- Employment with a local Mental Health, Public Health, Social Services or Emergency Management agency in North Carolina if such employment is subject to the State Human Resources Act; and
- Employment with the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees shall be counted; and the full legislative terms of the members.

Credit is given for any month in which an employee is in pay status for one-half or more of the workdays and holidays in that month.

Permanent part-time employees earn service time on the same basis as permanent fulltime employees. It is not prorated.

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§ 3. **Continuous State Service**

This type of service is the period of unbroken employment for employees under the State Human Resources Act. Only permanent uninterrupted employment status under the State Human Resources Act is creditable toward this time.

This type of service is used to establish eligibility for filing grievance appeals to the State Human Resources Commission. Refer to the Discipline/Appeals/ Grievances Section.

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§ 4. **Creditable Retirement Service**

This type of service is the length of time an employee has made contributions to the State Retirement System. It is not calculated the same as Total State Service. Refer to the Retirement System handbooks for further information. This service time is used to determine eligibility for a retirement benefit and the amount of the retirement benefit.

Creditable Service Policy (cont.)

§ 5. Source of Authority

- 25 NCAC 01D .0112

§ 6. History of This Policy

Date	Version
July 1, 1996	First version.
January 1, 2002	Revised to include an omission: Add Workers' Comp Leave under creditable total state service.
September 7, 2017	Policy revised to delete all references to trainee appointments. Changed revised date from January 1, 2011 to September 7, 2017.

Demotion/Reassignment Policy

Contents:

§ 1. Definition

Demotion or reassignment is a change in status resulting from assignment to a position assigned a lower salary grade.

§ 2. Policy

If the change in status results from inefficiency in performance or as a disciplinary action, the action is considered a demotion. If the change results from a mutual agreement between the employee and employer (e.g., choice of the employee; organizational needs, such as reorganization or reduction in force; or other mutually agreed upon arrangement), the action is considered a reassignment.

§ 3. Salary Rate

When the employee's current salary is above the maximum of the range for the lower class, the salary shall be reduced at least to the maximum of the lower range.

When the employee's current salary falls within the range of the lower class, it may be reduced to any salary in the lower range, or it may remain the same except in the following two situations:

(1) When an employee has been promoted or reallocated upward and is being demoted or reassigned to a lower class within one year, the following shall apply:

If to:	The salary shall:
the same grade level held before the promotion or reallocation,	revert to the salary paid before the promotion or reallocation plus any

Demotion/Reassignment Policy (cont.)

	increases that would have been given had the change not occurred.
a higher grade level than held before the promotion or reallocation,	revert to a salary that is permitted by the Promotion or Reallocation Policies, as though the previous promotion or reallocation had not occurred.
a lower grade level than held before the promotion or reallocation,	revert to the salary paid before the promotion or reallocation plus any increases that would have been given had the change not occurred, but not to exceed maximum.
Note: Computation of salaries must be shown on the PD-105, i.e., old salary plus dollar amount of increases to be added, such as legislative increase or performance increase.	

(2) When an employee has reduction-in-force priority rights, the following shall apply:

The employee's salary shall remain the same, unless the salary exceeds the maximum of the new salary grade. When the salary exceeds the maximum of the salary grade, the employee's new salary shall be reduced to the maximum of the new salary grade. (See Advisory Note below.)

Advisory Note: The agency is not relieved from paying the same salary rate unless the RIF employee voluntarily offers/agrees to accept a lower salary rate and a written "waiver" is obtained in the pre-screening phase of the selection process. Someone other than the supervisor making the selection decision should review the applicant pool before referring to the hiring authority. If a valid waiver is in place, the best practice would be to place the salary conditions in the written waiver agreement.

The agency would be allowed to give an increase(s) up to the previous salary amount should funds become available.

Demotion/Reassignment Policy (cont.)

§ 4. Effective Date

Demotions or reassignments shall be made effective on the date the employee assumes the duties of the new position or on the first day of the pay period nearest to that date.

§ 5. Qualifications

If a demotion or reassignment is made to a position within the same field of work, the employee automatically qualifies. However, if a demotion or reassignment is made to a different field of work, the employee must meet the minimum recruitment standards, or their equivalent, as set forth in the class specification.

§ 6. Appeal from Demotion

An employee who has achieved career status as that term is defined in N.C.G.S. § 126-1.1 shall have the right to appeal a demotion to the State Human Resources Commission. Provisions of the appeal procedure shall be followed.

§ 7. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S.§ 126-4(2), (6)
- 25 NCAC 01D .0400

§ 8. History of This Policy

Date	Version
January 1, 1976	Demotion - Revises salary policy to permit employee's salary to remain above the maximum of the range when an exception is justified.
July 1, 1977	Deleted provision for appeal from demotion for employees with less than 5 years of continuous state service.
August 1, 1977	Deleted provision that allowed exceptions for leaving salaries above the maximum. Salaries would have to be cut at least to the maximum on the effective date of the demotion.

Demotion/Reassignment Policy (cont.)

August 1, 1988	Revised Demotion Policy to "Demotion or Reassignment Policy." Deleted Performance Increase Anniversary Date.
January 1, 1990	Changed to conform to new pay plan (no steps).
July 1, 1990	Previous policy required that if employee is promoted and subsequently demoted, no increase can be given when promoted back to same level. Revised to allow an exception when employee is promoted or reallocated upward and subsequently demoted, reassigned or reallocated downward to any lower class within one year.
March 1, 1994	Clarified the definition of "demotion/reassignment" to make clear that it involves a change to a lower pay grade. Changed "permanent" to "career."
August 1, 1995	Appointment terminology clarified.
December 1, 1995	Revised to incorporate RIF provisions.
July 1, 2001	Revised to add paragraph at end of Salary Range, which was erroneously omitted.
July 1, 2002	Revised to include advisory note regarding salary "waiver."
April 1, 2005	Formatting change only. One of the paragraphs was moved for clarity.

Disciplinary Action Policy

Contents:

Disciplinary Action Policy

§ 1. Policy

State employees are expected to meet performance standards and conduct themselves appropriately. This policy is intended to provide tools for addressing employee conduct and performance issues in a reasonable, consistent, and effective manner.

The procedures in this policy provide for progressive discipline to address issues involving unsatisfactory job performance for employees to be given notice of deficiencies and an opportunity to improve them. However, this policy also recognizes that some employee conduct occurring either on-duty or off-duty is so egregious and intolerable that continued employment is not a possibility and progressive discipline is not appropriate. Behavior of this type is considered either unacceptable personal conduct, which can be either on-duty or off-duty, or in the case of on-duty behavior, grossly inefficient job performance.

The imposition of any disciplinary action shall comply with the procedural requirements of this policy.

§ 2. Covered Employees

This policy applies to employees who have attained career status as defined by North Carolina General Statute 126-1.1.[1]

§ 3. Employee Assistance Program (EAP)

Prior to or in conjunction with disciplinary action, a supervisor may elect to refer an employee to the Employee Assistance Program (EAP) as appropriate. Referral to EAP is not considered a substitute for any disciplinary action. For more information on the appropriate referral type, please see the **Employee Assistance Program Policy** (namecheck).

[1] This does not preclude an agency from issuing a disciplinary action to an employee who is not a career status employee, as defined in N.C.G.S. 126-1.1, however the issuance of a disciplinary action to an employee without career status does not create any requirement for the agency to utilize progressive discipline nor does it create grievance rights for employees who do not otherwise have these rights.

Disciplinary Action Policy

§ 4. Just Cause for Disciplinary Action

§ 4.1. Introduction

There are two bases for the discipline or dismissal of employees under the statutory standard for "just cause" as set out in G.S. 126-35. These two bases are:

1. Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
2. Discipline or dismissal imposed on the basis of unacceptable personal conduct[2].

The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.[3]

The courts have interpreted Just Cause to mean satisfying the requirements of the administrative code (as discussed in this policy) and in addition meeting an equitable test discussed in case law. Human Resources staff should consult with agency legal counsel about how case law has interpreted just cause with respect to past fact patterns.

§ 4.2. Unsatisfactory Job Performance

Unsatisfactory job performance means work-related performance that fails to satisfactorily meet job requirements as set out in the relevant job description, work plan, or as directed by the management of the work unit or agency.

§ 4.2(a) Addressing performance issues before disciplinary action

The intent of disciplinary action for unsatisfactory job performance is to promote improved employee performance. When coaching and a documented counseling session fail to correct employee performance, the manager/supervisor may address the matter by issuing a formal disciplinary action, the first level of which is a written warning. For more information on how to address performance issues prior to proceeding to disciplinary action, please refer to the **Performance Management Policy**.

[2] 25 NCAC 01J .0604(b)
[3] 25 NCAC 01J .0604(c)

Disciplinary Action Policy

§ 4.2(b) **What is Just Cause for Unsatisfactory Job Performance?**

Any work-related performance issue may establish just cause to discipline an employee for unsatisfactory job performance. Just cause for a warning or other disciplinary action for unsatisfactory job performance occurs when an employee fails to satisfactorily meet job requirements.

Disciplinary actions administered for unsatisfactory job performance are intended to prompt a permanent improvement in job performance. Should the employee's performance fail to improve in the time prescribed in a disciplinary action, or if the required improvement later deteriorates, or other inadequacies occur, the manager or supervisor may deal with this occurrence of uncorrected or new unsatisfactory job performance with additional progressive disciplinary action(s) [4].

The determination that an employee has engaged in unsatisfactory job performance is generally made by the supervisor in consultation with management. The supervisor's and/or managements' determination should be reasonable, consistent, factually supported and made in conjunction with the Human Resources Office. In determining whether an employee's job performance is unsatisfactory job performance, a manager/supervisor may consider any one or a combination of the factors set forth below. These include but are not limited to:

1. Failure to produce work of acceptable quality, accuracy, quantity, promptness, work habits, or by established deadlines;
2. Deficiencies in performance as required in the work plan or as noted in the performance evaluation;
3. Inability to follow instructions or procedures, appropriateness of work performed, or demonstrated poor judgement, analysis or decision-making;
4. Insufficient or inappropriate customer service, service delivery, or teamwork;
5. Misuse/abuse of fiscal resources, including a wasteful use of State resources;
6. Absenteeism, tardiness, or other abuses of work time.
7. Any other factors that, in the opinion of the supervisor and/or manager, are appropriate to determine whether an employee's performance constitutes unsatisfactory job performance.

[4] 25 NCAC 01J .0605(a), (b)

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§ 4.3. **What is Just Cause for Grossly Inefficient Job Performance?**

Just cause to issue disciplinary action for grossly inefficient job performance exists when an employee fails to satisfactorily perform job requirements as specified in their job description, work plan, or as directed by the management of the work unit or agency, and that act or failure to act causes or results in:

1. death or serious bodily injury or creates conditions that increase the chance for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) for whom the employee has responsibility; or,
2. the loss of or damage to State property or funds that results in a serious adverse impact on the State or work unit.

§ 4.4. **What is Just Cause for Unacceptable Personal Conduct?**

Just cause to issue a warning or take other disciplinary action for unacceptable personal conduct may be created by intentional or unintentional acts. The conduct may be job-related (on duty) or off duty so long as there is a sufficient connection between the off duty conduct and the employee's job.

Unacceptable personal conduct means:

1. Conduct for which no reasonable person should expect to receive prior warning;
2. Job-related conduct which constitutes a violation of State or federal law;
3. Conviction of a felony or an offense involving moral turpitude that is detrimental to or negatively impacts the employee's service to the State.;
4. The willful violation of known or written work rules;
5. Conduct unbecoming a State employee that is detrimental to State service;
6. The abuse of client(s), patient(s), student(s), or person(s) over whom the employee has responsibility or to whom the employee owes a responsibility, or the abuse of an animal owned by or in custody of the State;
7. Material falsification of a State application or other employment documentation[5] ;

[5] Staff interpreting this provision should consider GS 126-30 (See also 25 NCAC 01J 0616) which provides any employee who knowingly and willfully:

- discloses false or misleading information, or
- conceals dishonorable military service; or

8. Insubordination, which means the willful failure or refusal to carry out a reasonable order from an authorized supervisor;
9. absence from work after all authorized leave credits and benefits have been exhausted. (See alternatively the **Separation Policy** for information on Separation due to Unavailability, which may apply to situations in which leave credits and benefits have been exhausted.)

Examples of unacceptable personal conduct may include, but are not limited to:

- use of professional State credentials for personal gain (which may be an example of unacceptable personal conduct type (1) and/or (5) above);
- serious disruption in the workplace (which may be an example of unacceptable personal conduct type (1), (4) and/or (5) above);
- subjecting an employee, client, contractor, or customer to intentionally discriminatory treatment or harassment. (which may be an example of unacceptable personal conduct types (1), (2), (4) and/or (5) above)
- falsification of work-related documentation, such as a timesheet (which may be an example of unacceptable personal conduct type (1), (4), and/or (5) above.

Under Wetherington v. NC Department of Public Safety, a manager or supervisor should consider the following factors when deciding about the appropriateness of a disciplinary action for unacceptable personal conduct:

1. The severity of the violations.
2. The subject matter involved.
3. The harm resulting from the violations.
4. Prior work history, including disciplinary and performance history; and
5. The discipline imposed in other cases involving similar violations.

- conceals prior employment history or other requested information, either of which are significantly related to job responsibilities

on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment, but the severity of the disciplinary action shall be at the discretion of the agency head. Dismissal shall be mandatory where the applicant discloses false or misleading information in order to meet position qualifications.

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§ 5. Types of Disciplinary Action

When just cause exists, any career State employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointment authority. The degree and type of action taken shall be based upon the sound and considered judgement of the employing agency in accordance with this policy and after consultation with the Human Resources Office. Agency legal counsel should be consulted as necessary.

A. Written Warning

The supervisor shall monitor and promote the satisfactory performance of work assignments and ensure that employees do not engage in unacceptable personal conduct.

Unsatisfactory Job Performance: When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee shall receive. However , prior to the written warning, the manager/supervisor should provide feedback, as described in the **Performance Management Policy**, to the employee regarding the need for the employee to improve their performance. If performance does not improve following the feedback provided by the manager/supervisor (coaching), a Documented Counseling Session (DCS) shall be conducted prior to beginning disciplinary actions (including a PIP if it is issued as a disciplinary action, as described below) for most performance issues. Any disciplinary action issued for unsatisfactory job performance without a prior DCS must first be approved by the agency HR Director or designee. If performance does not improve after the first written warning, a supervisor may give additional written warnings or a higher level of disciplinary action.

Performance Improvement Plan: A Performance Improvement Plan (PIP) is a disciplinary action only if it is in writing and states it is a disciplinary action.[6] In order to be considered a disciplinary action, the PIP must also include all other information listed in 25 NCAC 01O .0210. Agencies may issue PIPs or other performance documentation that is not a written warning.

Unacceptable Personal Conduct or Grossly Inefficient Job Performance: The supervisor may elect to issue a written warning for grossly inefficient job performance or

[6] 25 NCAC 01O .0210

unacceptable personal conduct. However, this policy does not require a written warning before management administers other disciplinary action in these types of cases.

Written warnings shall:

1. Inform the employee in writing that it is a written warning, and not some other non-disciplinary process such as counseling;
2. Inform the employee of the specific issues that are the basis for the warning;
3. Tell the employee what specific improvements, if applicable, shall be made to address these specific issues;
4. Tell the employee the time frame allowed for making the required improvements or corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance[7] and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
5. Tell the employee the consequences of failing to make the required improvements or corrections.

B. Disciplinary Suspension without Pay

An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action. Prior to placing an employee on disciplinary suspension without pay, a management representative shall conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements of this policy.

Length of Time for Disciplinary Suspension

A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two work weeks (ten work days). The length of a disciplinary suspension without pay for an employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week (five work days), but not more

[7] Unsatisfactory job performance involving absenteeism, tardiness, or other abuses of work time may require immediate improvement.

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than two full work weeks (ten work days). The length of a disciplinary suspension for an employee on a non-forty-hour week/schedule shall be no more than 80 hours.

An agency or university has the option of imposing the same periods of disciplinary suspension without pay upon all employees as long as the time period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

Type of Employee	Minimum Period for Disciplinary Suspension	Maximum Period for Disciplinary Suspension	Minimum Time Block
Subject to FLSA	1 work day	2 work weeks (10 work days)	At least 1 work day
Exempt from FLSA	1 work week (five work days)	2 work weeks (10 work days)	1 work week (five work days) but no portion of a full work week.

C. Demotion

Any employee may be demoted as a disciplinary measure. Demotion may be made based on unsatisfactory job performance, grossly inefficient job performance or unacceptable personal conduct. An employee may be demoted for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action.

Prior to demoting an employee, a management representative shall conduct a pre - disciplinary conference with the employee in accordance with the procedural requirements of this policy.

Disciplinary demotions must be conducted in accordance with the appropriate salary administration policies. (See **Demotion and Reassignment Policy**)

D. Dismissal

Dismissal may be a result of unsatisfactory job performance, grossly inefficient job performance or unacceptable personal conduct. An employee may be dismissed for

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disciplinary purposes for unsatisfactory job performance after the receipt of at least two prior disciplinary actions, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action.

Prior to dismissing an employee, a management representative shall conduct a pre - disciplinary conference with the employee in accordance with the procedural requirements of this policy.

Required Consultation

The supervisor recommending dismissal must discuss the recommendation with appropriate agency management, including Human Resources. Agency legal counsel should be consulted as necessary. Upon approval by agency management, a pre-disciplinary conference shall be held with the employee.

§ 6. Procedures for Issuing Disciplinary Action Other Than a Written Warning

Prior to the decision to issue a disciplinary action other than a written warning, the following procedures must be followed in accordance with this policy. Before a manager/supervisor can issue a disciplinary action of suspension, demotion, or dismissal, a Pre-Disciplinary Conference (PDC) must be held. A PDC is not required if management intends to issue a written warning.

Prerequisites for Disciplinary Action

Unsatisfactory Job Performance	Unacceptable Personal Conduct or Grossly Inefficient Job Performance
1. The employee must have a current unresolved incident of unsatisfactory job performance. 2. **Demotion or suspension**: the employee must have at least one active disciplinary action (these do not need to be related to the current incident). 3. **Dismissal:** the employee must have at least two active disciplinary actions (these do not need to be related to the current incident). *	1. The employee must have a current unresolved incident of unacceptable personal conduct or grossly inefficient job performance. 2. A Pre-Disciplinary Conference (PDC) must have been held with the employee.

4. A Pre-Disciplinary Conference (PDC) must have been held with the employee.	

* Disciplinary actions related to personal conduct may be included in the progressive system for performance-related dismissal provided the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal based on unsatisfactory job performance.

A. Active Disciplinary Actions

Disciplinary actions issued for unsatisfactory job performance, grossly inefficient job performance, or unacceptable personal conduct are all subject to becoming inactive for the purposes of counting towards the number of prior disciplinary actions needed for further discipline. Disciplinary actions are deemed inactive if:

1. the manager or supervisor notes in the employee's file that the reason for the disciplinary action had been resolved or corrected;
2. the purpose of a performance based disciplinary action has been achieved, as evidenced by an overall performance rating at an acceptable level or better and satisfactory performance in the goal(s) and/or organizational value(s) cited in the disciplinary action[8]; or
3. 18 months have passed since the disciplinary action, and the employee does not have another active disciplinary action which occurred within the last 18 months.

If an employee receives a new disciplinary action while he/she has an active disciplinary action in their personnel file, the oldest active disciplinary action(s) in the file will take on the life span of the most recent disciplinary action, not to exceed an additional 18 months (that is, the action cannot remain active for more than 36 months). The actions do not have to be related in content.

[8] Disciplinary actions based only on unacceptable personal conduct or grossly inefficient job performance cannot become inactive due solely to an acceptable performance management rating.

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§ 7. **Procedures for Pre- Disciplinary Conference (PDC)**

A. Prior to the Conference -

Before demotion, suspension or dismissal of an employee:

- A supervisor or management designee must schedule and conduct a Pre-Disciplinary Conference (PDC) after discussing their recommendation with the appropriate agency management and receiving management's authorization to hold the PDC;
- The supervisor or management designee must give the employee advance written notice (at least 24 hours) of the conference. While a minimum of twenty-four (24) hour's notice to the employee is required, advance notice should be as much time as practical under the circumstances;
- The notice must inform the employee of the type of disciplinary action being considered (demotion, suspension or dismissal), that a lesser disciplinary action is possible, the conference time and location, and the specific acts or omissions that are the reasons for the recommendation;
- If a demotion is being considered, the supervisor must inform the employee if the demotion may change the employee's compensation rate or classification title.
- The person conducting the pre-disciplinary conference must have the authority to recommend or decide what, if any, disciplinary action should be issued to the employee. The following people may be included in the conference:
  - The supervisor or other person chosen by agency management to conduct the conference;
  - A second management representative may be present at management's discretion;
  - The employee;
  - If the person conducting the conference chooses, security may be present. In lieu of security being present, the agency may require that the conference be held virtually.;
  - In addition to the participants in the conference noted above, agency procedures may provide for one additional neutral party if agreed upon by the employee and management.

Virtual Pre-Disciplinary Conference: The pre-disciplinary conference may be held virtually, upon agreement of the agency representative and the employee (except when the agency has security concerns as noted above). Both parties must have access to

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computer equipment with audio and video capabilities, as well as the ability to send and receive e-mail during the virtual conference.

Legal Representation: No attorneys representing either side may attend the conference nor shall any witnesses attend the conference for either party. This provision does not prevent either party from consulting with legal representation.

Employee Absence: The employee's failure to attend the PDC after receipt of written notification shall not automatically stop the disciplinary process. In such situations, management must consult with Human Resources to determine whether rescheduling the PDC is warranted.

Recordings: There shall be no stenographic, audio, or video recording of the pre-disciplinary conference by any participant. However, either party may take notes of the conversation during the PDC.

B. During the Conference -

During the conference, the person conducting the conference must:

- Give the employee written notice (hard copy or electronic) that the PDC cannot be recorded by either party or attended by attorney representatives;
- Give to the employee written notice (hard copy or electronic) of the recommendation for demotion, suspension or dismissal, including the specific reasons for the proposed disciplinary action and a summary of the facts supporting the recommendation; and
- Give to the employee an opportunity to respond to the recommended disciplinary action, offer facts that are different from those offered by management and offer facts in support of the employee's position. Every effort shall be made by management to ensure an employee has every opportunity to set forth any available information in opposition to the recommendation. This policy does not give an employee the right to have witnesses present at the conference.

C. Following the Conference -

After the conference, management shall:

- Review all necessary information, consider the response of the employee, and decide on the recommended disciplinary action;
- Allow time to review all necessary information and not communicate the decision to the employee prior to the beginning of the next business day following the conclusion of the

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pre-disciplinary conference or after the end of the second business day following the completion of the pre-disciplinary conference; and

- If management decides to demote, suspend, or dismiss the employee, then the employee shall receive a written disciplinary action letter either in person or by certified mail (or equivalent) with return receipt requested.

  The written disciplinary action letter must include:

  1. The basis for the disciplinary action;
  2. The effective date of the disciplinary action;
  3. The specific acts or omissions that are the reason(s) for the disciplinary action;
  4. The employee's right to appeal and a copy of the grievance policy;
  5. If the disciplinary action is a dismissal, the employee shall be informed that a copy of the written notice of the final decision is public record and open to inspection per GS 126-23.

Effective Date: The effective date of the dismissal for unsatisfactory job performance shall be determined by management. A career state employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of the dismissal. Instead of providing up to two weeks' working notice, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissal for unsatisfactory job performance. The effective date of the dismissal for unsatisfactory job performance shall be no sooner than the date of the written notice of dismissal and no later than 14 calendar days after the written notice.

D. Failure to Follow Procedure

Failure to give written reasons for the demotion, suspension, or dismissal, written notice of appeal rights, or to conduct a pre-disciplinary conference is a procedural violation. If an agency fails to follow procedure, the agency shall be subject to the rules of the Commission dealing with procedural violations as described in 25 NCAC 01J .1316.

The time for filing a grievance because of the demotion, suspension, or dismissal does not start until the employee receives written notice of any applicable appeal rights.

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E. Public Information

- The date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the agency are public records open to inspection per GS 126-23.
- If the disciplinary action was dismissal, a copy of the written notice of the final decision including the specific acts or omissions are public records open to inspection per GS 126-23.
- If an employee is dismissed and appeals their dismissal through the grievance procedure, the final agency decision shall set forth the specific acts or omissions that are the basis of the employee's dismissal. In addition, the employee shall be informed in the final agency decision letter that the final agency decision letter is a public record and that the agency is required by law to release it pursuant to any public record requests.

F. Additional Pre-Disciplinary Conference

- An additional pre-disciplinary conference is required if the employer receives new information about the allegations of wrongdoing that requires additional investigation and these specific acts or omissions were not included in the initial pre-disciplinary conference notification letter.
- When a pre-disciplinary conference is conducted for a recommended type of disciplinary action, but after the conference, the agency decides to take disciplinary action of a higher degree of seriousness than the one for which the conference was held, it is required that the agency conduct an additional pre-disciplinary conference.
- When a pre-disciplinary conference is conducted for a recommended type of disciplinary action, but after the conference, the agency decides to take disciplinary action of a lesser degree of seriousness than the one for which the conference was held, it is not required that the agency conduct an additional pre-disciplinary conference as long as the employee was notified and had the opportunity to be heard with respect to the behavior which is the basis for the less serious disciplinary action.

  However, it is permissible for the agency to conduct such an additional pre-disciplinary conference if the agency determines that it would be appropriate under

the circumstances, or if the employee requests the additional opportunity to be heard.

For example, if a pre-disciplinary conference is conducted with a recommendation or intent of dismissal and the agency decides to demote rather than dismiss, it would not be necessary to conduct another pre-disciplinary conference unless the agency or employee believes that there are relevant issues that could not have been addressed or were not addressed in the previous pre-disciplinary conference or, if the employee was not notified of the possibility of a lesser degree of disciplinary action.

- If any agency determines an additional PDC is necessary, the agency will follow the procedures described in Section 7 A, B and C of this policy.

§ 8. Transfer of Disciplinary Action

When an employee transfers to another department or unit, any active written warnings or disciplinary actions will transfer with the personnel file of the employee and will remain in full force at the new work unit until removed by the new employer or made inactive by operation of this policy.

§ 9. Investigatory Leave with Pay

Investigatory leave with pay shall be used to temporarily remove an employee from work status. Placement on investigatory leave with pay does not constitute a disciplinary action. However, the information discovered during the investigation may be the basis of disciplinary action.

A. Procedures for Placing an Employee on Investigatory Leave with Pay[9]

- Management must notify an employee in writing (hard copy or electronic) of the reasons for placement on investigatory leave with pay status no later than the second scheduled workday after the beginning of the placement. A placement on investigatory leave with pay may last no more than thirty (30) calendar days without written approval of an extension by the State Human Resources Director (of no more than an additional 30 calendar days).

[9] 25 NCAC 01J .0615(a), (b)

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- When an extension beyond the thirty-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by an agency by the end of the thirty-day period and no further extension has been granted, the agency must either take appropriate disciplinary action based on the findings from the investigation or return the employee to active work status.
- Under no circumstance is it permissible to use placement on investigatory leave with pay for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

B. Acceptable Reasons for Initial Placement of an Employee on Investigatory Leave with Pay[10]

An employee may be placed on investigatory leave with pay for the following reasons:

- To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- To provide time within which to schedule and conduct a pre-disciplinary conference;
- To avoid disruption of the work place and/or to protect the safety of persons or property;
- To facilitate a management directed referral or fitness for duty evaluation to ensure the employee's safety and the safety of others and to obtain medical information regarding the employee's fitness to perform his or her essential job functions.

C. Acceptable Reasons for Extending Investigatory Leave with Pay[11]

- The matter is being investigated by law enforcement personnel, the investigation is not complete, and the agency is unable to complete its own independent investigation without facts contained in the law enforcement investigation, and the agency is unable to conduct its own investigation;
- A management individual who is necessary for resolution of the matter is unavailable; or
- A person or persons whose information is necessary for resolution of the matter is/are unavailable.

[10] 25 NCAC 016 .0615(c)
[11] 25 NCAC 01J .0316(a)

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§ 10. **Right of Appeal**

Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.

An agency shall furnish to the employee, as an attachment to the written documentation of any grievable disciplinary action, a copy of the State Grievance Policy.

A. Waiver of Appeal Rights

If a disciplinary action is grievable, and the employee fails to timely grieve the disciplinary action, the employee is deemed to have waived the right to contest the validity of the disciplinary action.

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§ 11. **Policy Responsibilities**

A. Agency

Through the supervisor, the agency shall:

1. Assure the satisfactory performance of work assigned to an employee of the work unit. The supervisor's determination of what is satisfactory is presumed to be reasonable and factually supported;
2. Maintain and communicate an expectation of acceptable personal behavior by its employees;
3. Initiate a disciplinary action when in the judgement of the supervisor the employee has engaged in behavior prohibited by this policy;
4. Maintain records and provide to the Office of State Human Resources information and statistics on the discipline and dismissal process in a form prescribed by the Office of State Human Resources; and
5. Have personnel trained in the administration of this policy.

B. Office of State Human Resources

The Office of State Human Resources shall:

1. Provide for training in the administration of this policy;
2. Provide technical assistance and advice to agencies and universities;
3. Review agency compliance;
4. Establish reasonable benchmarks for program performance; and

5. Report and make recommendations to the State Human Resources Commission on the discipline process.

C. State Human Resources Commission

The State Human Resources Commission shall:

1. Identify corrective measures on any agency that:
   a. Fails to comply with this policy;
   b. Fails to report in a format prescribed by the Office of State Human Resources; or
   c. Fails to administer the discipline and dismissal process in a manner that is fair to all parties, equitable, free of unlawful discrimination, and maintains discipline.

§ 12. Credentials

By statute, regulation, and administrative rule, some duties assigned to positions in service may be performed only by persons who are duly licensed, registered, or certified as required by the relevant law or policy. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for job classifications established by the State Human Resources Commission.

Failure to obtain or maintain legally required credentials can be dealt with as disciplinary action, or through the Separation Policy.

A. Falsification of Credentials

Falsification of employment credentials or other documentation about securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a State agency, disciplinary action shall be administered as follows:

1. If an employee was determined to be qualified and was selected for a position based on falsified work experience, education, registration, licensure, or certification information that was a requirement of the position, the employee may be dismissed without warning following a pre-disciplinary conference. An employee dismissed on this basis shall be given a notice of the dismissal in writing that includes specific reason for the dismissal and notice of the employee's right to appeal.
2. In all other cases of post-hiring discovery of false or misleading information, disciplinary action will be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.

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3. When credential or work history falsification is discovered before employment with a State agency, the applicant shall be disqualified from consideration for the position in question.

§ 13. **Definitions**

Agency – Organizational units to include agencies, universities, boards, commissions, and other entities subject to the provisions of this policy.

Current Unresolved Incident - An act of unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance for which no disciplinary action has previously been taken by the agency.

Demotions – A personnel action taken, without employee agreement, to discipline the employee, which results in:

- lowering the salary of an employee within their current pay grade, or
- places the employee in a position at a lower pay grade with or without lowering the employee's salary.

Dismissal - The involuntary termination of an employee from employment for disciplinary reasons or for failure to obtain or maintain necessary job related credentials.

Grossly Inefficient Job Performance – Defined in Section 4.3 of this Policy.

Inactive Disciplinary Action - A disciplinary action becomes inactive, i.e., cannot be counted towards the number of prior disciplinary actions that must be received before further disciplinary action can be taken for unsatisfactory job performance when:

- the manager or supervisor notes in the employee's personnel file that the reasons for the disciplinary action have been resolved or corrected; or
- the purpose of a performance based disciplinary action has been achieved, as evidenced by an overall performance rating at an acceptable level or better and satisfactory performance in the goal(s) and/or organizational value(s) cited in the disciplinary action, or
- eighteen (18) months have passed since issuance of the warning or disciplinary action and the employee has not received another active disciplinary action during the 18-month timeframe.

Note: The completion of the personnel transactions necessary for a demotion or suspension do not make the disciplinary action inactive. These actions remain active for 18 months.

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Insubordination - The willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.

Suspension without Pay - The unpaid removal of an employee from work for disciplinary reasons.

Unacceptable Personal Conduct - Defined in Section 4.4 of this Policy.

Unsatisfactory Job Performance - Defined in Section 4.2 of this Policy.

§ 14. Sources of Authority

This Policy is issued under any and all of the following sources of authority:

- N.C.G.S. § 126-4(6), which authorizes the State Human Resources Commission to establish policies governing the “appointment, promotion, transfer, demotion and suspension of employees.”
- N.C.G.S. § 126-4(7a), which authorizes the State Human Resources Commission to establish policies governing the “separation of employees.”
- N.C.G.S. § 126-4(10), which authorizes the State Human Resources Commission to establish policies governing “other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration.”
- N.C.G.S. § 126-30(c), which requires the State Human Resources Commission to “issue rules and procedures” to implement G.S. 126-30, the statute on fraudulent disclosure and willful nondisclosure on applications for State employment.
- N.C.G.S. § 126-35(a), which states, “The State Human Resources Commission may adopt, subject to the approval of the Governor, rules that define just cause.”

This Policy is compliant with the following additional laws and regulations:

- N.C.G.S. §§ 126-1.1, 126-23, and 126-30
- 25 NCAC 01J .0600, 25 NCAC 01J .1316, and 25 NCAC 01O .0210

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§ 15. **History of This Policy**

Date	Version
December 15, 1969	First version. policy concerning disciplinary action and dismissal designed to solve problems in a fair and equitable manner without prejudice or favoritism.
December 29, 1975	Revised hearing procedure to shorten delay of hearings of new evidence or exceptions to the findings and rulings of the hearing officer.
January 7, 1976	Revised to provide for an impartial departmental employee relations committee. Allows personnel officers to serve only in an advisory capacity on personnel policy during grievance hearings.
September 30, 1977	Revised to provide law enforcement division to correct conduct of law enforcement personnel when said division has specific narrowly defined uses for suspension and the period of suspension does not exceed 3 days.
December 1, 1984	Final Written Warning - As a part of counseling, management may request employee to take up to a day's leave with pay to consider whether or not employee wishes to continue employment. Suspension – a department may extend the period of investigatory suspension without pay beyond the 45-day limit. Permanent employees may file an appeal of disciplinary action.
February 1, 1985	Established procedures for administering the Disciplinary Action, Suspension and Dismissal Policy.
August 1, 1985	Revised pre-dismissal hearing policy due to decision of the US Supreme Court, which defined minimum procedural due process due employees upon being dismissed.
December 1, 1985	Changed pay in lieu of notice to apply to situations other than job performance.
January 1, 1988	Added section on credentials - applicant information and application.

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June 1, 1988	Dismissal during probationary or trainee period revised to conform to legislation.
May 1, 2004	Delete the Grandfather provision, which is outdated.
August 1, 1988	Pre-suspension and pre-demotion conferences added. Agencies do not need to inform OSP as disciplinary suspensions without pay since its purpose in monitoring the use has been served.
April 1, 1989	Changed process for filing grievances/
July 1, 1989	Clarification of warnings/reprimands based on personal conduct. Such warnings cannot be used to shorten the mandatory three warning process for job performance dismissal.
November 1, 1989	Employee may be given 2 weeks pay in lieu of notice without getting prior approval. Technical change that requires at least one disciplinary action to be taken in cases of falsification. Deleted pay in lieu of notice for falsification.
March 1, 1990	Allows management to have a witness or security personnel present at predismissal conference if deemed necessary.
March 1, 1991	Employee Appeals & Grievances – revised to require approval of SPC for any settlement or agreement which requires exception to policy.
September 1, 1991	Dismissal part of policy revised. 7-1-93 Change “permanent” to “career.”
August 2, 1993	“Just cause," unacceptable job performance, unacceptable personal conduct defined.
October 1, 1995	Entire policy revised.
January 1, 2002	Page 18 changed to conform to current rule which states that "A second management representative may be present at management's discretion." Page 19 changed to conform to current rule which states that the decision should not be communicated after the end of the second business day following the completion of the conference.
May 1, 2004	Delete the Grandfather Provision, which is outdated.

Disciplinary Action Policy

July 1, 2004	Disciplinary Action, Suspension and Dismissal Clarified Falsification of Credentials as follows: (1) Deleted last paragraph under "What is just cause for grossly inefficient job performance?" (2) Revised paragraph on Obtaining and Maintaining Credentials. (3) Revised Paragraph 1 under Falsification of Credentials.
July 1, 2010	Deletes the out-dated provision for an extension under the definition of Inactive Disciplinary Action. "Extensions" of disciplinary actions were permitted initially to provide a smooth changeover from a system with no time limits on disciplinary actions to a system with an 18 month time limit. Since we are now well beyond 18 months past 1995, this provision is no longer needed and is occasionally confusing.
February 1, 2011	The 2010 General Assembly passed House Bill 961 which, among other things, made the dismissal letter public information. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.
October 1, 2017	Updated to support the performance management policy, clarify or expand existing information in the policy, and delete outdated portions of the policy. The specific disciplinary procedures have not changed.
August 7, 2023 (effective September 15, 2023)	All sections of the policy revised. Added cross references to other policies, removed gendered language, revised language that was inconsistent with the North Carolina Administrative Code to be consistent with the Code, including the definition of Unacceptable Personal Conduct, added footnotes with citations to the Administrative Code, removed definitions that were already written elsewhere in policy, and added reference to specific policy section.

Drug and Alcohol Free Workplace Policy

Contents:

§ 1. Policy

The State of North Carolina is committed to protecting the health, safety and welfare of its employees and the public that it serves. Alcohol abuse and drug use pose a significant threat to these goals. The Office of State Human Resources has established a statewide Drug and Alcohol Free Workplace policy that balances respect for individuals' privacy with the need to maintain an alcohol and drug-free environment.

§ 2. Purpose

It is the purpose of this policy to ensure state employees have the right to a workplace that is safe and free of alcohol and controlled substances and to meet the requirements of all applicable laws and regulations.

§ 3. Employees Covered

This policy applies to any individual who is employed by the State of North Carolina.

§ 4. Prohibited Behavior

It shall be a condition of employment that each employee become familiar with and abide by the provisions and procedures of this policy. Employees are expected to report to their worksite prepared to perform their required duties and assignments. An employee who reports to work under the influence of alcohol or illegal drugs, or who manufactures, uses,

dispenses, purchases, sales, possesses or distributes alcohol or illegal drugs in the workplace shall be subject to discipline, up to and including dismissal. This may include a referral to local law enforcement, if appropriate.

Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with the safe performance of his/her job duties. If the use of a medication could compromise employee performance or the safety of the employee, fellow employees or the public, it is the employee's responsibility to notify their supervisor and use appropriate leave in order to avoid unsafe workplace practices.

The illegal or unauthorized use of prescription drugs is prohibited in the workplace. It is a violation of this policy to intentionally misuse and/or abuse prescription medications while at work or when representing or conducting business for the State of North Carolina.

§ 5. Failure of Employees to Comply with Policy

Failure of an employee to comply with this policy may result in disciplinary action up to and including dismissal. Management must consider the following factors for disciplinary actions:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense or conduct; and
- The nature of the job held.

§ 6. Employee Assistance

The Drug and Alcohol Free Workplace policy encourages employees to voluntarily seek help with alcohol and/or drug problems. The State of North Carolina recognizes that issues with alcohol and drug abuse and addiction are treatable. We also recognize that early intervention and support improves the success of rehabilitation. This policy:

- Encourages employees to seek help if they are concerned that they or their family members may have a drug and/or alcohol problem.

Drug and Alcohol Free Workplace Policy

- Encourages employees to utilize the services of qualified professionals in the community to assess the seriousness of suspected drug or alcohol problems and identify appropriate sources of help.
- Offers all employees and their family member's assistance with alcohol and drug problems through the Employee Assistance Program (EAP).

§ 7. Responsibilities

§ 7.1. Employee Responsibilities

Each employee shall:

1. Adhere to the provisions of the Drug and Alcohol Free Workplace policy, including all notification provisions;
2. Report to their worksite prepared to perform their required duties without being under the influence of alcohol or illegal drugs;
3. Seek help with alcohol and/or drug problems when necessary.

§ 7.2. Agency Responsibilities

Each Agency Head, Department Head and University Chancellor shall:

1. Adhere to the Drug and Alcohol Free Workplace policy that has been adopted by the State Human Resources Commission;
2. Inform employees of the Drug and Alcohol Free Workplace policy;
3. Refer or encourage employees impacted by drugs and alcohol to utilize the services offered by the Employee Assistance Program;
4. Clearly state consequences of policy violations to employees;
5. Establish procedures to conduct drug and alcohol testing; and
6. Establish procedures related to notification to management by employees arrested, charged or convicted of a criminal drug or alcohol violation.

§ 7.3. Office of State Human Resources Responsibilities

The Office of State Human Resources (OSHR) shall:

Drug and Alcohol Free Workplace Policy

1. Coordinate the implementation of a Statewide Drug and Alcohol Free Workplace policy; and
2. Provide technical assistance, oversight, and support for the policy.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(10)

§ 9. History of This Policy

Date	Version
August 13, 2018	• First version.

Dual Employment Policy

Contents:

§ 1. Purpose

The dual employment policy is a state-wide uniform policy to be followed when one state agency or university secures the services of an employee of another state agency or university on a temporary, part-time, consulting or contractual basis when the demand for an employee with special skills and abilities is required for the efficient operation of a program. It is recognized that conditions vary widely from agency to agency or university to university; however, this policy will attempt to cover as many different situations as possible and to strike a sound balance between the interest of the State, the agency, the university, the employee and the public.

For employees engaged on a full-time basis, any additional work for an entity other than a state agency or university is termed secondary employment and is covered in the Secondary Employment Policy.

§ 2. Coverage

This Policy applies to all employees who are subject to State Human Resources Commission's policies issued under N.C.G.S. § 126-4(4), (5), and (6). Coverage under this policy includes, but is not limited to, probationary, time limited, exempt policymaking, and exempt managerial employees. It does not apply to temporary employees, public school employees, employees of the Community College system, or other employees who are exempt from State Human Resources Commission policies issued under N.C.G.S. §126-4(4), (5), and (6).

Dual Employment Policy (cont.)

This Policy applies only in situations involving the same employee working for two agencies or working for an agency and a university or working for two universities.

For situations involving one employee assuming dual roles within the same agency, see Hours of Work and Overtime Compensation Policy, especially the section of that policy entitled "Occasional or Sporadic Employment in a Different Capacity."

§ 3. Definitions

For purposes of this policy, the terms below mean the following:

Term	Definition
Parent Agency/University	The State department, agency, or university having control over the services of the employee, and from which the employee receives his/her regular paycheck.
Borrowing Agency/University	The State department, agency, or university seeking on a temporary, part-time, consulting, or contractual basis the services of an employee of another State agency or university.
FLSA Not Subject	Employees primarily performing work that is not subject to overtime provisions of the Fair Labor Standards Act, usually executive or professional in nature. Overtime pay is not required by FLSA.
FLSA Subject	Employees primarily performing work that is subject to the overtime provisions of the Fair Labor Standards Act. Overtime of not less than one- and one-half times their regular rates of pay for hours worked in excess of 40 hours per week is required.

Dual Employment Policy (cont.)

Work Week	The work week is based on the work week of the parent agency/university, even for employees on vacation.
Dual Employment Agreement Form	This form is used to acknowledge that one state agency or university is securing the services of an employee of another state agency or university on a part-time, consulting, or contractual basis and have entered into an agreement for an employee of the state to be employed dually and should be completed prior to the employee performing work for the borrowing agency/university. Dual Employment Agreement Form
OSC Timesheet	This timesheet is used for payment when both the parent and the borrowing agency utilize the HRIS/Payroll System. Dual Employment Forms | NC OSC
CP-30 Form	This form is used to request additional payment to an employee for work performed at another state agency or university when the parent agency does not use BEACON. The form is available at this link: Link to CP-30 Form

§ 4. **Permission of Parent Agency/University**

The administrative head or designee of the parent agency/university must give approval in writing using the Dual Employment Agreement Form in each instance of an employee's performing services for pay for another State agency/university prior to the employee performing services for the other agency/university. Approval can be granted or denied after considering such factors as ethical consideration or conflicts of interest, or whether the dual employment would affect the employee's regular duties or pose an undue hardship on the parent agency/university.

Dual Employment Policy (cont.)

If an employee does not receive a regular paycheck from the parent agency/university (i.e., the employee only does occasional work for the parent agency/university), the employee does not need to get approval from the parent agency/university to perform services for the borrowing agency/university, but the parent agency/university must complete a Dual Employment Agreement and an OSC timecard/CP-30 to ensure payment for services.

If the head of the agency/university is to perform services for pay for another State agency or University, the arrangements must be approved by the director of the Office of State Budget and Management.

§ 5. Statement of Employee's Immediate Supervisor

By signing the Dual Employment Agreement Form, the employee's immediate supervisor is certifying that (a) the actual work and any related travel time will be performed outside of regularly scheduled working hours, and (b) the employee will not use "company time" to prepare for the services to the borrowing agency/university.

§ 6. Payment

1. No employee, even while on paid leave, may be paid additionally for services performed for the employee's parent agency/university.
2. If payment is to be made for services, the rate must be agreed upon in advance and may not be increased merely because additional funds become available. Neither are retroactive payments permissible to persons who have already performed services without compensation.
3. Commuting expenses are not reimbursable.
4. An employee under contract to an educational institution for an academic year (normally, nine months) is ordinarily considered to be a free agent during the summer, notwithstanding that such employee may be paid on a twelve-month basis, however, a Dual Employment Agreement Form and CP-30 Form must be complete to ensure payment for services.

Dual Employment Policy (cont.)

5. All payments for services provided under Dual Employment must be made by the borrowing agency directly to the parent agency/university of the employee borrowed, and not to the employee.
6. All payments for services of borrowed employees must be made by the borrowing agency from dual employment line items. They may not be made from salaries and wages line items.
7. Employee's travel and/or subsistence expenses, if any, incurred in the performance of services for the borrowing agency/university, will be paid directly to the employee by the borrowing agency/university. (Commuting expenses are excluded.)
8. If the work (including preparation) is performed during the employee's regular work schedule (such as 8:00 a.m. to 5:00 p.m., Monday through Friday), and the employee is not on leave, the employee may not under any circumstances receive additional pay.
9. If the work (including preparation) is performed outside the employee's regular work schedule, the employee may receive additional pay. All State employees are subject to the provisions of the Federal Fair Labor Standards Act. There are certain exceptions to the overtime provisions of the law when it is applied to persons in Professional, Administrative, or Executive positions.
10. In a dual employment situation, the duties of both positions are combined to determine if the person is FLSA Subject or FLSA Not Subject. FLSA Subject employees, therefore, when serving another State agency, must be in accordance with the minimum wage and overtime pay provisions, which require overtime payments of time and one-half the employee's regular rate of pay for the hours worked in excess of 40 hours in the week. However, if during any given work week the employee does not perform any work for the parent agency/university, no overtime payment will be required unless the employee works more than 40 hours for the borrowing agency/university. For FLSA Subject employees, any overtime or comp time obligation shall be split between the parent and borrowing agency/university as follows:

Dual Employment Policy (cont.)

(a) If the employee would have been entitled to overtime or comp time hours based solely on hours worked at the parent agency/university, the parent agency/university shall be responsible for the overtime payments or comp time for those hours worked at the parent agency/university.

(b) Compensation for any remaining overtime hours shall be the responsibility of the borrowing agency/university.

For FLSA Not Subject employees, no overtime or comp time will accrue from the work for the borrowing agency/university; instead, the borrowing agency/university will pay the employee on a straight-time basis.

11. If a straight-time employee is on authorized leave from regular duties with the parent agency/university, the employee may be paid for the extra work on the same basis as in 10 above.
12. In <u>all</u> cases of additional payment to an employee, the parent agency/university must make the payment to the employee as an addition to the employee's regular pay. This is necessary to maintain the integrity of the retirement, social security, and Federal and State income tax records. If payments fall into the category of overtime, as the term is understood in federal and state wage and hour regulations, such overtime payments by the parent agency/university to the employee must be made from Salaries-Overtime budgeted line items.

§ 7. Maintaining Records

The parent agency/university should maintain the Dual Employment Agreement Form and OSC timesheet or CP-30 Form in the employee personnel file.

§ 8. Honorarium

Any payment by an agency/university to an employee of another agency/university as an honorarium or other payment for a speech is subject to these procedures. It is assumed that certain officials and staff will make outside appearances and speeches, which are in fact a part of their normal duties, and such officials and staff should not expect to be paid for these occasions.

Dual Employment Policy (cont.)

§ 9. **Sources of Authority**

This Policy is issued under N.C.G.S. § 126-4(4) (empowering the Commission to establish policies on recruitment programs), 126-4(5) (empowering the Commission to establish policies on hours and days of work and "other matters pertaining to the conditions of employment"), and 126-4(6) (empowering the Commission to establish policies on appointment of employees).

§ 10. **History of This Policy**

Date	Version
July 1, 1971	Revised – Employment contribution for retirement are applicable only when borrowing agency is supporting a portion of employee's regular salary.
February 1, 1976	Changed "Procedure – Dual Employment" to "Dual Employment Policy."
February 1, 1984	Dual Employment policy moved from Section 3, General Pay Policy, Section 7, Administration of the Pay Plan when the new OSP Manual was developed 12-1-84.
February 1, 1988	Revised to allow provision for "occasional and sporadic" employment; and to revise reporting requirements.
September 1, 2002	Corrected to state that dual employment must be paid from dual employment line items – per OSBM policy.
April 20, 2023 (effective June 1, 2023)	Incorporated dual employment of university employees into the policy, removed definitions that are no longer utilized, added definitions of FLSA Subject, FLSA Not Subject, Work Week, and CP-30 Form, changed references to exempt/nonexempt to FLSA Not Subject/FLSA Subject, clarified Permission section, removed Professional Services Contract, Instructional Services and Joint Appointments sections, updated Procedures for Payment and Maintaining Records sections, added Honorarium and Sources of Authority sections.

Educational Leave Policy

Contents:

§ 1. Policy

The State may provide leave with pay or leave without pay for certain types of educational courses. The references to approved educational courses may be found in the Academic Assistance Policy located in Section 9 of the State Human Resources Manual. When leave is necessary for educational purposes, the following provisions shall be followed:

§ 2. Extended Educational Leave with Pay (only available to permanent full-time for paid leave)

An approved course as outlined in the Academic Assistance Policy located in Section 9 of the State Human Resources Manual should be taken on the employee's own time. If a course can be taken only during working hours, eligible employees must request paid leave prior to the beginning of the course allowing sufficient time for the leave request to be reviewed. Educational Leave with Pay may be granted unless the supervisor identifies responsibilities or assignments that will not permit the employee to be absent. Supervisors are encouraged to develop alternate work arrangements to complete the work assignments and also grant educational leave. Reasonable travel time as determined by the supervisor may be permitted to attend approved courses.

If management approves educational leave with pay, it shall not be charged to the employee's accrued leave and shall be recorded as "Educational Leave" and approved by management in the payroll system of record.

Educational leave during work hours shall not exceed one course up to five hours academic credit per academic term. Exceptions to the leave restriction may be addressed using the following Extended Educational Leave provisions of this policy.

Educational Leave Policy (cont.)

§ 3. Extended Educational Leave without Pay

Courses taken at the agency request that exceed the credit hours per academic term limitation must utilize Extended Educational Leave. An agency wishing to initiate a program for a number of employees to participate in a degree or certificate program must also utilize Extended Educational Leave.

Under Extended Educational Leave, the State may provide leave with pay or leave without pay for certain types of academic courses as outlined below:

- Educational Leave Without Pay – Extended educational leave without pay may be granted in accordance with the normal leave policy as outlined in the Leave Without Pay Policy located in Section 5 of the State Human Resources Manual.
- Educational Leave with Pay – Extended educational leave with pay shall be granted when an agency/university has requested an employee to pursue additional educational opportunities. Educational leave with pay may be granted when an employee has requested to pursue additional educational opportunities and these opportunities are related to the employee's current position or enhance the employee's current or future job duties and responsibilities thus benefiting the agency/university. In other situations, employees may be allowed to utilize accrued paid leave, upon managerial approval.

All Educational Leave with Pay must be recorded as "Educational Leave" and approved by management in the payroll system of record.

State agencies may also consider any permanent, probationary or time-limited employee for extended educational leave to participate in job or career-related work-study, scholarship or fellowship programs based upon the following criteria:

- Verification that both labor market and organizational needs exist for development in the program requested.
- Equal opportunity provided in selection of candidates.
- Employees are informed of agency policies and procedures regarding:
  - ✓ Announcement and application procedures,
  - ✓ Screening and selection of employees,
  - ✓ Limitations and restrictions on academic courses,

Educational Leave Policy (cont.)

- ✓ Leave, salary, benefit conditions, withholding taxes and FICA, and
- ✓ Reimbursement agreement.

Requests for extended academic leave initiated by the employee and which do not meet with the above criteria will be administered according to the State Human Resources policy on leave without pay located in Section 5 of the State Human Resources Manual.

§ 4. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1100

§ 5. History of This Policy

Date	Version
March 1, 1967	• Employees may be granted leave with pay for additional training in a job- related course during working hours - one such course during the semester or quarter.
December 15, 1969	• When going on leave without pay for educational purposes, annual may be exhausted, paid in a lump sum or retained for future use.
January 1, 1979	• Revised to show title change of the “Education Leave and Tuition Refund Program” to “Educational Assistance Program.”
June 1, 2003	• Corrected reference from Educational Leave Policy to Academic Assistance Policy.
October 6, 2016	• Defined Education Leave with Pay and Extended Education Leave Requirements.

Emergency Closing Policy

Contents:

§ 1. Policy

When an emergency closing of a State facility or workplace occurs, the State shall provide paid time off for employees who are required to evacuate a location or worksite as a result of emergency conditions as determined by emergency/public safety officials or the agency head in consultation with the agency's safety officer or designee. Agency management should make every effort to relocate employees to a safe work location or worksite in lieu of work stoppage. If relocation is not a viable option, employees should be paid for lost time from work during the period designated as an emergency closing.

§ 2. Employees Covered

This policy applies to all employees subject to the Human Resources Act.

§ 3. Definitions

Emergency Employees: Employees who are required to work during emergency conditions because their positions have been designated in advance by their agency head or designee as essential to agency operations or are designated "called in" during an event as necessary in response to a specific emergency in compliance with the agency's emergency response plan.

Emergency Operations: Services that have been determined necessary by the agency head. These services typically fall into the areas of law enforcement/public safety, direct

Emergency Closing Policy (cont.)

patient care, facility maintenance and food service, but could also vary depending on the nature of the emergency.

§ 4. Emergency Closing Conditions

Emergency conditions are determined by emergency/public safety officials or the agency head in consultation with the agency's safety officer or designee to be hazardous to life or safety of both the general public as well as employees at a specific location or worksite. Examples of emergency evacuations include catastrophic life-threatening natural disasters such as hurricanes, tornados, earthquakes, and floods. Evacuation may also result from fire, bomb threats, prolonged disruption of power and/or water, contamination by hazardous agents, terrorist acts or any other conditions that are specifically determined to be hazardous to the life and safety of the general public, customers, clients, patients, students and employees.

Loss of heat and air conditioning does not necessarily constitute an emergency condition. While loss of heat/air may result in uncomfortable working conditions, it is not typically considered life threatening or unsafe for the general public or employees. Employees should be allowed to dress appropriately based on the temperature and may be allowed to use fans or space heaters with the approval of the agency safety officer. Employees with health conditions that may be sensitive to unregulated temperatures should be relocated to an alternate worksite or allowed to use appropriate leave. In the case of prolonged loss of heat and air during times of extreme weather temperature conditions (freeze or heat warnings), an agency head should relocate employees to an alternate worksite, allow employees to temporarily work from home if appropriate, or utilize the "Adverse Weather Policy" located in Section 5 of the State Human Resources Manual to cover the period of suspension of work due to adverse temperatures.

The University of North Carolina System: The UNC System Office of the President shall make decisions concerning emergency closings as outlined in the UNC System Adverse Weather and Emergency Event Policy.

The declaration of a "State of Emergency" by the Governor does not affect an agency head or designee's authority and responsibility for making emergency closing decisions and implementing emergency response plans based on the nature of the disaster/emergency; however, during disaster/emergency conditions, the Governor or

Emergency Closing Policy (cont.)

emergency/public safety officials may order mandatory evacuations of geographic areas of the State impacted by the disaster, order mandatory closure of roads, or order mandatory curfews. In the case of State ordered mandatory evacuations, the emergency closing policy will apply to all worksites in the designated area.

For those agencies that rent office space from non-State entities, the agency should have an agreement or understanding with the landlord as to who makes decisions and communicates facility closings based on emergency conditions at the worksite.

§ 5. Weather Related Emergency Conditions

Adverse weather conditions typically do not result in an emergency closing at a work location or worksite. Emergency closings are site-specific and dependent upon the determination of an emergency/public safety official or an agency head that the location is not safe for general public, customers, clients, patients, and employees (both non-Emergency and Emergency) to remain at the work location. Emergency worksite evacuations typically occur because of catastrophic life-threatening weather conditions such as hurricanes, tornados, floods, etc. The State of North Carolina does not CLOSE due to winter storms (snow and ice) that impact travel conditions (accumulation of ice/snow on roads, parking lots, and sidewalks). Employees should follow the “Adverse Weather Policy” located in Section 5 of the State Human Resources Manual for guidelines on reporting to work during winter storms. Heavy accumulation of snow and ice on power lines, trees and rooftops may result in an emergency closing evacuation of a worksite if there is prolonged loss of power/water, downed trees and power lines that make the worksite unsafe, or heavy accumulation of snow/ice on a rooftop that may make the building or structure unstable and the roof may collapse.

§ 6. Designation of Emergency Employees

Agency heads shall predetermine to the extent possible which employees will be required to work during an emergency closing based on the potential nature of the emergency. Each agency shall develop an emergency response plan which identifies specific processes and procedures for responding to emergency situations.

Emergency Closing Policy (cont.)

§ 7. Failure of Emergency Employees to Report

An Emergency employee's failure to report to work or remain at work may result in disciplinary action and requiring the hours missed to be charged to leave with or without pay, as appropriate, as determined by management.

Exception: When travel conditions cause an Emergency employee to arrive late, the agency head or designee may determine that conditions justified the late arrival. An Emergency employee is expected to notify their supervisor or designee of their inability to report to work on time due to travel conditions so essential work operations are covered in their absence. In such cases, the lost time may be made up in lieu of using paid leave or leave without pay.

§ 8. Agency Procedures Required

Agencies shall develop written procedures that are consistent with, and incorporate the provisions of, this policy. The procedures shall at least include:

- How employees will be advised of agency, office, or facility closing decisions,
- Which employees are designated as Emergency based on the nature of the emergency,
- How employees will be notified that their positions are designated as Emergency,
- That Emergency employees are required to report for, or remain at work in emergency situations, and
- An explanation that closing announcements do not apply to Emergency employees unless they are instructed otherwise.

If an agency determines that a situation requires employees not designated as "Emergency employees" to report for work, or remain at work, during an emergency, the agency should establish a procedure for notifying them individually. Emergency designations may change depending on the nature of the emergency.

§ 9. Alternate Worksites during Emergency Conditions

If possible, an agency head should reassign employees to alternative worksites within the same commuting area in order to avoid work stoppage. If the emergency conditions are expected to continue for a prolonged period of time, the agency head should

Emergency Closing Policy (cont.)

consider alternative work arrangements such as flexible work schedules and working from home if applicable.

§ 10. Accounting for Time

The following shall apply when a state facility or worksite is closed due to emergency conditions:

- Employees who are not required to work at an alternate site or as an Emergency employee shall not be required to charge leave or make up the time.
- Emergency employees required to work during the emergency shall be granted emergency time off (ETO) on an hour for hour basis for all hours worked. This time must be used within 18 months of it being awarded. Agencies shall make every effort to give employees the opportunity to take this time off. It should be used after compensatory time off, but must be used before vacation, or bonus leave. ETO not taken within 18 months is lost. ETO is not paid out upon separation and does not transfer to another State agency.
- If additional employees, not designated as Emergency, are needed for situations such as cleanup and recovery during the time the agencies remain closed, the agency head shall compensate them in the same manner as designated Emergency employees.
- Non-Emergency employees who are reassigned to a different work location to avoid work stoppage or who are approved to work under alternative work arrangements, shall be paid for their regular salary for all hours worked but will not be granted ETO.

Employees who are on prearranged vacation leave or sick leave will charge leave to the appropriate account.

§ 11. Overtime Pay

FLSA subject employees shall receive overtime compensation, either compensatory time or pay, for all hours worked over 40 hours in accordance with the Hours of Work and Overtime Policy.

FLSA exempt employees may be granted compensatory time for all hours worked over 40 hours or agencies may choose to use the below provision.

Emergency Closing Policy (cont.)

When the Governor declares a "State of Emergency," agencies are authorized to pay overtime at straight-time rates to FLSA exempt employees when the following conditions occur:

- A gubernatorial declaration of a "State of Emergency,"
- Management requires employees to work overtime for purposes of response and/or recovery during the emergency, and
- Funds are available to pay overtime. The agency shall determine if funds are available and obtain prior approval from the Office of State Budget and Management to use such funds to cover the overtime payments. The agency shall distribute any overtime pay consistently with a pre-defined standard that treats all employees equitably.

§ 12. Reporting Requirements

All emergency closings shall be reported to the State Human Resources Director within five calendar days after the end of the occurrence.

To report an Emergency Closing: click here

§ 13. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5) and (10)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1005

§ 14. History of This Policy

Date	Version
January 1, 2015	Provisions for emergency closing were previously included in the Adverse Weather policy. A separate policy has been adopted for clarification purposes. At the same time, the following amendments were included: • Clarified agency heads should make emergency closing decisions in consultation with their safety officer or designee.

Emergency Closing Policy (cont.)

	• Added definitions for emergency employee and emergency operations. • Removed reference to snow and ice as examples of a “catastrophic life-threatening weather event”. Added a section on “Weather Events” which clarifies “catastrophic weather events” that may cross over from regular adverse weather conditions to emergency closing conditions. • Clarified that emergency closings impact both non-mandatory and mandatory employees. • Added bomb threats as an example of an emergency evacuation and removed equipment failure as an example. • Clarified emergency closings should only be implemented for “prolonged” disruption of power and/or water. • Clarified loss of heat and air conditioning does not necessarily meet the definition of emergency closing. Referred to the adverse weather policy if weather conditions are extreme. • Clarified how a declaration of a “State of Emergency” impacts emergency closing decisions. • Clarified rented office space from a non-state entity should have an agreement or understanding on who makes and communicates facility closing decisions due to emergency conditions. • Clarified emergency time off (ETO) must be taken within 12 months or it is lost and it is not paid out upon separation or transfer to another agency. • Clarified non-emergency employees who are reassigned to a different work location or alternate work arrangement will not be eligible for emergency time off (ETO).
October 21, 2019	• Changed “emergency” employee to “mandatory” employee throughout the document to align with the verbiage used in the Agency Adverse Weather Policy.

Emergency Closing Policy (cont.)

	• Added note to reference Adverse Weather Policy for conditions that are related to an adverse weather event but do not warrant an emergency closing. • Changed the definition of Emergency Employee to Mandatory Employee and provided clarity to be consistent with the definition used in the Adverse Weather Policy. • Changed the definition of Emergency Operations to Mandatory Operations and provided clarity to be consistent with the definition used in the Adverse Weather Policy. • Revised the reference to the University of North Carolina System to refer to the separate UNC System Adverse Weather and Emergency Event Policy which provides guidance for university employees. • The verbiage used in the Failure of Mandatory Employees to Report section was revised to provide clarity. • Accounting for Time section has been revised to indicate mandatory employees who are required to work during the emergency shall be granted emergency time off (ETO)on an hour for hour basis for all hours worked. This time must be used within 12 18 months of it being awarded. ETO not taken within 18 months is lost.
February 4, 2021	• Policy reviewed by Total Rewards-Salary Administration Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Update Adverse Weather policy to more closely reflect Administrative rule 25 NCAC 01E .1005, by updating the usage of “Mandatory” (e.g., “Mandatory Employees”, “Mandatory Operations”) to “Emergency”. There is no mention of “Mandatory” in Administrative Rule: 25 NCAC 01E .1005. The Communicable Disease policy also references “Mandatory” Employees

Emergency Closing Policy (cont.)

	specifically to a public health emergency. Changing “Mandatory” to “Emergency” in the Adverse Weather policy will also alleviate possible confusion of the “Mandatory” designation referenced in the Communicable Disease policy.

Employee Assistance Program Policy

Contents:

§ 1. Policy

It is the policy of North Carolina State government that all agencies shall provide a comprehensive Employee Assistance Program (EAP) for eligible employees. The EAP Program is a confidential counseling and resource program that serves as a benefit to employees, their dependent family members, and supervisors/mangers.

The Office of State Human Resources administers the EAP Program for state agencies by contracting with an EAP vendor that offers self-referrals, supervisory referrals, management directed referrals, and fitness for duty evaluations, as well as other program services such as critical incident response, workplace training events, and work-life resources.

The University of North Carolina also administers EAP Programs for the UNC System, and EAP contracts for UNC constituent institutions may further stipulate procedures specific to an institution for the types of referrals defined below.

Employee Assistance Program Policy

§ 2. Purpose

The purpose of the EAP is to combine sound management principles with supportive intervention techniques to provide resource information and treatment opportunities for employees needing assistance. Problems addressed by the EAP include but are not limited to: emotional, family, work, marital, alcohol, drug, financial, legal and other personal issues. The program seeks to maintain and restore individual health and well-being, improve productivity and retain valued employees.

For specific information on the university EAP https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/

§ 3. Coverage

Agency - The EAP shall be made available to all full-time employees. Dependent family members also are eligible to use the services of the EAP.

At the discretion of the agency and with agreement from the EAP vendor, part-time, temporary and other categories of employees may be included.

For specific information on the university EAP https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/

§ 4. Program Access

Agency - The EAP is available 24 hours a day, seven days a week, 365 days a year to assist employees and management through the NC EAP dedicated, toll-free phone number. Daytime and evening appointments are available for EAP services.

For specific information on the university EAP <link>

§ 5. Program Options

Agency - The program provides a maximum of three (3) separate counseling sessions, per identified issue per year, to each eligible employee and to each dependent family member.

For specific information on the university EAP https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/

Employee Assistance Program Policy

§ 6. Leave Time

An employee will not be charged leave for participating in mandatory (Management Directed Referral or Fitness for Duty Evaluation) EAP services. For self-referrals, supervisory referrals, or continuing treatment or rehabilitation with a professional provider beyond the contract provisions, vacation leave, sick leave, or leave without pay may be used.

§ 7. Program Cost

Agency - Agencies are responsible for the cost of contracting for EAP services. There is no cost to the employee for the services provided directly by the EAP. The employee is responsible for the costs associated with any subsequent recommended treatment beyond three sessions.

If all three sessions are not utilized because the employee requires a referral for more specialized or longer-term treatment, the cost is the responsibility of the employee.

The requesting agency is responsible for all costs associated with a fitness for duty evaluation. The employee is responsible for the costs associated with any subsequent recommended treatment.

For specific information on the university EAP https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/

§ 8. Confidentiality

The agency may disclose information to the EAP regarding a situation concerning an employee while receiving a consultation or in making a referral. The EAP may only disclose client information to the employer with the written consent of the employee. The written consent shall outline specific information that will be disclosed to the employee's agency.

Federal and state law, along with professional ethics, requires that the EAP exercise the highest standards of client confidentiality.

Notwithstanding professional standards of confidentiality, federal and state laws require the disclosure of information in certain circumstances. These circumstances include the following situations:

- Threat of harm to self or others,

Employee Assistance Program Policy

- Knowledge of abuse or neglect of a child, elderly or disabled person,
- Upon court order, or
- Medical necessity

§ 9. Types of Referrals

There are four types of EAP referrals:

- Self-Referral
- Supervisory Referral
- Management Directed Referral
- Fitness for Duty Evaluation

	Participation	Leave Options	Type of Issue Addressed
Self-Referral	Voluntary	Personal (vacation, sick or LWOP)	Personal or work concerns.
Supervisory Referral	Voluntary	Personal (vacation, sick or LWOP)	Personal or work concerns.
Management Directed Referral	Mandatory	Investigatory Leave with Pay (ILWP)	Concerns require prompt and immediate attention to avoid disruption of the workplace.
Fitness for Duty Evaluation	Mandatory	Investigatory Leave with Pay (ILWP)	Concerns pose an immediate threat to self or others.

§ 10. Self-Referral

A self-referral is a voluntary contact initiated by the employee to obtain confidential assistance for a personal or medical problem. The employee may contact the EAP directly and select a face-to-face or a telephonic assessment. The contact is strictly confidential between the employee and the EAP. The EAP does not notify the agency of an employee's self-referral.

Employee Assistance Program Policy

Management should encourage the use of the EAP, especially if they have knowledge that an employee is experiencing personal, work, or family problems.

§ 11. Supervisory Referral

A supervisory referral is designed to provide a management tool for addressing unsatisfactory job performance or unacceptable personal conduct. Supervisors should encourage the use of EAP as a means for an employee to receive assistance for concerns that may be negatively impacting job performance or personal conduct.

This referral is provided as an option to the employee. Should the employee decline the initial offer of EAP services, the offer can be repeated any time the supervisor feels the employee may have become more receptive.

If the employee accepts the offer of EAP services, the Human Resources Office, in collaboration with the employee's supervisor, may contact the EAP in advance of the appointment to provide background information about the employee and details of the job performance or personal conduct that is of concern. If treatment is recommended, the EAP will refer the employee to a treatment provider and monitor the employee's compliance with treatment recommendations and will maintain ongoing communication with the agency until closure.

Unlike self-referrals, which are strictly confidential between the employee and the EAP, with a supervisory referral, limited information can be released by the EAP to the agency Human Resources Office with the written consent of the employee. This information is limited to:

- Whether the employee kept the initial EAP appointment,
- Whether the employee agreed to follow recommendations,
- Whether the employee is continuing to comply with recommendations, and
- When there is closure of services

Disciplinary action may be taken for any ongoing or subsequent job performance or personal conduct, regardless of the employee's active involvement in the EAP.

§ 12. Management Directed Referral

A management directed referral is a mandatory EAP option that may be used to address employee behavior (including performance or conduct) that requires prompt or

Employee Assistance Program Policy

immediate attention and which may warrant disciplinary action. The purpose of the referral is to protect the workplace from disruption and to develop a plan of action to resolve the situation caused by the employee's conduct. As an example, this referral may be used when an employee has demonstrated:

- Erratic or unusual behavior that is disruptive to the workplace or may present a potential health/safety danger to self or others, or to state property,
- Impairment on the job, or
- Positive alcohol or drug test

When considering a management directed referral, management must first consult with the agency Human Resource Office which will work in conjunction with legal counsel.

When making a management directed referral, management must explain to the employee the process that is being considered in a manner that helps the employee understand expectations for the employee and what disciplinary action will likely occur. Specifically, management must communicate in writing the following information to the employee:

- Specific reason(s) for the management-directed referral
- Management's expectations for compliance in resolving the concern(s)
- The conditions of the referral, which include:
  - Comply with the directive to undergo a management-directed referral,
  - Comply with and completion of any subsequent treatment recommendations, and
  - Make required corrections in job performance or personal conduct
- Possible consequences for the employee's failure to accept all the conditions of the referral or to make and sustain required correction in job performance or personal conduct.

Refusal by the employee to participate in the EAP may be just cause for disciplinary action. Disciplinary action may also be based on the job performance or personal conduct issue that prompted the referral.

The agency may issue a lesser form of disciplinary action if the employee complies with the management directed referral and completes the recommended treatment. If the employee later fails to comply, the agency may issue an appropriate level of disciplinary action.

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The Human Resources Office must contact the EAP in advance of the appointment to provide background information about the employee and details of the job performance or personal conduct that prompted the referral. If treatment is indicated, the EAP will refer the employee to a treatment provider and monitor the employee's compliance with treatment recommendations and will maintain ongoing communication with the agency until closure.

The EAP will release limited information from the management directed referral to the agency with the written consent of the employee. The information is limited to:

- Whether the employee kept the initial EAP appointment,
- Whether the employee agreed to follow recommendations,
- Whether the employee is continuing to comply with recommendations, and
- When there is closure of services.

If, at any time, the employee refuses to sign the necessary consent for release of information or later revokes the consent for release of information, or does not comply with treatment recommendations, the agency may rely solely on the disciplinary process to address the job performance or personal conduct issue that originally prompted the referral.

§ 13. Fitness for Duty Evaluation

A fitness for duty evaluation is a mandatory EAP option that may be used when an employee's behavior creates a reasonable belief that an employee poses an immediate hazard or risk to self or others, or to state property. It also may be used when there is a reasonable belief that an employee is not fit to perform the essential job functions due to a psychological or psychiatric condition. This may include suicidal ideation without an underlying conduct or performance issue.

When considering a fitness for duty evaluation, management must first consult with the agency Human Resource Office which will work in conjunction with legal counsel.

When making a fitness for duty evaluation referral, management must explain to the employee the process that is being considered in a manner that helps the employee understand what is expected and what disciplinary action likely will occur. Specifically, management must communicate in writing the following information to the employee:

- Specific reason(s) for the fitness for duty evaluation,
- Management's expectations for compliance in resolving the concern(s),
- The conditions of the referral, which include:

Employee Assistance Program Policy

- Comply with the directive to undergo a fitness for duty evaluation,
- Comply with and completion of any subsequent treatment recommendations or any other conditions of the evaluation, and
- Make required corrections in job performance or personal conduct, and

- Possible consequences for the employee's failure to accept all the conditions of the referral or to make and sustain required correction in job performance or personal conduct.

An employee's refusal to participate in the EAP may be just cause for disciplinary action. Disciplinary action may also be based on the job performance or personal conduct issue that prompted the referral.

The agency may issue a lesser form of disciplinary action if the employee complies with the fitness for duty evaluation and completes the recommended treatment. If the employee later fails to comply, the agency may issue an appropriate level of disciplinary action.

The agency Human Resources Office will provide the following information to the EAP in advance of the referral:

- Precipitating event(s)
- Documented performance, conduct, and/or behavioral concerns
- Pending and/or active disciplinary action
- Employee's job description or essential job functions

The EAP will facilitate the referral to a qualified resource to conduct the fitness for duty evaluation. Unlike the supervisory referral or the management directed referral, the agency Human Resources Office will receive an evaluative summary from the evaluating resource regarding the employee's fitness for duty. The evaluative summary will recommend at a minimum one of the following courses of action as defined in the fitness-for-duty program for the agency:

- Fit to return to duty without specific recommendations. The evaluator has determined that the employee does not pose a hazard or risk to self or others, or to state property and is fit for duty.
- Fit to return to duty with specific recommendations. The evaluator has determined that the employee does not pose a hazard or risk to self or others, or to state

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property and is fit for duty. However, the evaluative findings recommend that the employee should undergo treatment as a condition of continued employment.

- Not fit to return to duty until specific recommendations have been met. The evaluator has determined that the employee may pose a hazard or risk to self or others, or to state property and is not fit-for-duty. Management in consultation with the agency Human Resources Office shall consider the recommendations in the evaluative summary. If return to work is contemplated, the state shall set the terms and conditions that must be met before the employee shall be allowed to return to work.

If treatment has been recommended following the fitness for duty evaluation, the EAP will provide the following services:

- Refer the employee to a treatment provider,
- Monitor the employee's compliance with treatment recommendations, and
- Maintain ongoing communication with the agency until closure of services.

If, at any time, the employee refuses to sign the necessary consent for release of information or later revokes the consent for release of information, or does not comply with treatment recommendations, the agency may rely solely on the disciplinary process to resolve the job performance or personal conduct, or behavioral issue that originally prompted the referral.

The agency is responsible for the cost of the fitness for duty evaluation, as defined in the EAP program. The employee is responsible for the cost associated with any subsequent recommended treatment. The agency is considered the client; therefore, the evaluative summary will be provided directly to the Human Resources Office.

§ 14. Investigatory Leave with Pay

Investigatory leave with pay shall be used initially when management determines that the employee should not remain in or temporarily return to the workplace. Management's decision must consider the best interests of the agency and the employee in deciding to use the investigatory leave with pay provision. Investigatory leave with pay may be used for an EAP referral in the following situations:

- Avoid disruption of the workplace and to protect the safety of persons or property,
- Investigate allegations of performance or conduct deficiencies that may constitute just cause for disciplinary action,

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- Provide time to schedule and conduct a pre-disciplinary conference,
- Facilitate a management directed or a fitness for duty evaluation.

§ 15. Investigatory Leave with Pay for Management-Directed Referrals

Investigatory leave with pay shall end when EAP notifies the agency that recommendations for treatment have been made following the assessment of the employee, or the results of an alcohol or drug test have been received and the agency makes a decision regarding the employee's status. If the employee is not able to return to work or if the employee requires leave time for recommended treatment, the agency shall advise the employee of leave options. Those options may include sick leave, or if eligible, family and medical leave or short-term disability.

§ 16. Investigatory Leave with Pay for Fitness for Duty Evaluations

Investigatory leave with pay shall end when the agency receives the evaluative summary of the fitness for duty evaluation and is able to make a decision regarding the employee's status. If the employee is not able to return to the workplace based on the results and recommendations of the evaluative summary or if the employee requires leave time for recommended treatment, the agency shall advise the employee of leave options. Those options may include sick leave, or if eligible, family and medical leave or short-term disability.

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§ 17. Responsibilities

§ 17.1. Employee Responsibilities

Employees are always responsible for performing assigned job duties satisfactorily, conducting themselves appropriately in the workplace, and availing themselves of resources designed to facilitate the resolution of workplace concerns.

§ 17.2. Management Responsibilities

Management is responsible for managing employee performance, setting performance expectations, addressing performance and conduct deficiencies and for using the fitness for duty evaluation or disciplinary process when appropriate. Management, in consultation with agency human resources, shall utilize the services of EAP for consultation, and refer employees for EAP services in a fair and consistent manner.

§ 17.3. Agency Responsibilities

All state agencies shall participate in the State's contract to provide EAP services to agencies. The University of North Carolina will administer the EAP Programs for the UNC System. As part of the development and support of EAP within the organization, each agency shall provide ongoing information to employees, supervisors and managers on the use of EAP services in compliance with this policy. Each agency shall designate an EAP Coordinator who has primary responsibility for the administration and communication of EAP services.

§ 17.4. Office of State Human Resources Responsibilities

The Office of State Human Resources is responsible for securing, maintaining and administering an EAP contract to provide employee and management services to state agencies (excluding the UNC system). OSHR will assist in resolving any issue between a state agency and the EAP vendor.

Employee Assistance Program Policy

§ 18. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126

It is compliant with the Administrative Code rules at:

- 25 NCAC 01

§ 19. History of This Policy

Date	Version
June 1, 1992	• First version.
January 1, 2003	• Revised to reflect program changes in the EAP and changed the fol policy provisions: • (1) Eliminates self referral • (2) Allows for only management referrals • (3) Adds Fitness for Duty/Risk Evaluation referral process • (Exception Case No. 02-08)
February 1, 2006	• Policy removed since program has been contracted to a third party.
August 13, 2018	• This is a new policy that details the components of the EAP process intended to provide greater clarity on the referral options available t employees and management.

Grievance Policy

Contents:

Grievance Policy (cont.)

§ 1. Policy

It is the policy of North Carolina State government that a grievance process exists to allow for prompt, fair and orderly resolution of grievances arising out of employment. Each agency shall adopt this Employee Grievance Policy as approved by the State Human Resources Commission. Agencies may supplement this policy by developing additional internal procedures beyond the informal discussion process for issues that may only be grieved at the agency level.

§ 2. Objectives

In establishing this Employee Grievance Policy, the State Human Resources Commission seeks to achieve the following objectives:

- Provide procedural consistency across the agencies of North Carolina State government;
- Ensure employees have access to grievance procedures to address grievable issues timely, fairly, and without fear of reprisal; and
- Resolve workplace issues efficiently and effectively.

§ 3. Definitions

The following are definitions of terms used in this policy:

Term	Definition
Agency	A State department, office, board, or commission.
Alleged Event or Action	The precipitating workplace event or action, or the receipt of notice of an event or action that is the basis for filing a grievance or complaint.
Applicant	A person who submits an application for initial hire, promotion or reemployment for a position in a State agency.
Career State Employee	A State employee who is in a permanent position with a permanent appointment and has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the North Carolina Human Resources Act for the immediate 12 preceding months. Employees who are hired by a State agency, department or

Grievance Policy (cont.)

	university in a sworn law enforcement position and who are required to complete a formal training program prior to assuming law enforcement duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months.
Complainant	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates an informal complaint through the Equal Employment Opportunity (EEO) Informal Inquiry process.
Contested Case Issue	A grievable issue that may be appealed to the Office of Administrative Hearings.
Equal Employment Opportunity Informal Inquiry	An informal process for addressing allegations of unlawful discrimination, harassment and retaliation that may facilitate a resolution prior to the filing of a grievance.
Final Agency Decision	The final decision issued by the Agency Head that concludes the internal grievance process.
Formal Internal Grievance Process	The process available to an applicant, probationary State employee, former probationary State employee, career State employee or former career State employee to file a formal grievance based on issues that are defined as grievable by State statute.
Formal Internal Grievance Process Timeframe	The internal grievance process must be completed within 90 calendar days. Time spent in the Informal Discussion and the EEO Informal Inquiry is not included in the 90-calendar day timeframe.
Grievable Issue	A workplace event or action as defined by NC State statute as grievable that allows an eligible employee to challenge the alleged workplace event or action through established grievance procedures for resolution.
Grievant	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates a grievance.

Grievance Policy (cont.)

Hearing	A proceeding overseen by a Hearing Officer or Hearing Panel that allows a grievant to present information relevant to the nature of the grievance and the remedies sought.
Hearing Officer	An officer appointed by an agency to oversee the proceedings of a hearing and submit a proposed recommendation for a Final Agency Decision (FAD).
Hearing Panel	An agency appointed panel of no less than three members selected to conduct a hearing. The designated panel chair has the responsibility to oversee the proceedings of the hearing and submit a proposed recommendation for a Final Agency Decision.
Impasse	An impasse occurs when mediation does not result in an agreement.
Informal Discussion	An informal process for addressing a grievable issue that may facilitate a resolution prior to the filing of a formal grievance and the process for addressing issues for which one may not file a formal grievance.
Mediation	The process in which the grievant and the agency respondent use a neutral third party(s) to attempt to resolve a grievance in a mutually acceptable manner. Responsibility for resolving the grievance rests with the parties.
Mediation Agreement	The written agreement resulting from the successful resolution of a grievance reached in mediation. The Mediation Agreement is legally binding on both parties.
Mediator	A neutral third party(s) approved by the Office of State Human Resources (OSHR) whose role is to guide the mediation process, facilitate communication, and assist the parties to generate and evaluate possible outcomes for a successful resolution. A mediator does not act as a judge and does not render decisions.
Probationary State Employee	A State employee who is exempt from the provisions of the North Carolina Human Resources Act only because the employee has not been continuously employed by the State for the time period required to become a career State employee.

Grievance Policy (cont.)

Respondent	A designated agency representative who has the authority to negotiate an agreement, as appropriate, on behalf of the agency to resolve a grievance.

§ 4. Grievable Issues and Who May Grieve

The following tables list all issues that may be grieved by an applicant for State employment, a probationary State employee or former probationary State employee, and a career State employee or former career State employee.

The following issues may be grieved at the **agency level only** through the Informal discussion process outlined in Section 7 of this policy, however the employee shall not proceed to the formal internal grievance process. If applicable, employees may follow any supplemental agency procedure for issues that may be grieved at the agency level only.

Applicant for State employment (initial hire, promotion or reemployment)	1. Denial of request to remove inaccurate and misleading information from applicant file (excludes the contents of a performance appraisal and written disciplinary action) 2. Denial of National Guard preference as provided for by law.
Probationary State employee or former probationary State employee	1. Denial of request to remove inaccurate and misleading information from personnel file (excludes the contents of a performance appraisal and written disciplinary action) 2. Denial of National Guard preference as provided for by law.
Career State employee or former career State employee	1. Denial of request to remove inaccurate and misleading information from personnel file (excludes the contents of a performance appraisal and written disciplinary action) 2. Denial of National Guard preference as provided for by law. 3. Overall performance rating of less than “meets expectations” or equivalent as defined in the Performance Management Policy

The following issues must first be grieved through the formal internal grievance process. If the grievant is not satisfied with the Final Agency Decision (FAD), the grievant may appeal to the Office of Administrative Hearings.

Grievance Policy (cont.)

Who May File	Grievable Issues
Applicant for State employment (initial hire, promotion or reemployment)	• Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law) • Denial of veteran's preference as provided for by law • Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been discriminated against in his or her application for employment • Retaliation for protesting (objecting to or supporting another person's objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been retaliated against in his or her application for employment

Grievance Policy (cont.)

Probationary State employee or former probationary State employee	• Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law) • Denial of veteran's preference as provided for by law • Any retaliatory personnel action for reporting improper government activities ("whistle blower") • Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment. • Retaliation against an employee for protesting (objecting to or supporting another person's objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment

Grievance Policy (cont.)

Exempt Managerial employee	• Denial of veteran's preference as provided for by law • Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment. • Retaliation against an employee for protesting (objecting to or supporting another person's objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment

Advisory Note: Certain statutory exempt employees may be able to grieve denial of veteran's preference as provided for by law. Refer to N.C.G.S. § 126-82(d) and § 126-83 for details.

In addition to the grievable issues listed above, a career State employee or former career State employee may also grieve the following issues.

Career State employee or former career State employee	• Dismissal, demotion, or suspension without pay for disciplinary reasons without just cause • Involuntary non-disciplinary separation due to unavailability • Denial of reemployment or hiring due to denial of reduction in-force priority as required by law (N.C.G.S. § 126-7.1) • Denial of promotional opportunity due to failure to give priority consideration for promotion to a Career State employee as required by law (N.C.G.S. § 126-7.1)

Grievance Policy (cont.)

§ 5. Grievance Process for All Grievable Issues

A. A grievance or complaint must be initiated in accordance with this policy within **15 calendar days** of the alleged event or action that is the basis of the grievance.

1. Any grievance or complaint that alleges unlawful discrimination, harassment or retaliation shall be addressed and completed through the Equal Employment Opportunity (EEO) Informal Inquiry process before being considered in the formal internal grievance process.

2. All grievable issues, except for issues pertaining to discrimination, harassment, retaliation, disciplinary actions, and non-disciplinary separation due to unavailability must first be discussed with the immediate or other appropriate supervisor in the employee's chain of command or other appropriate personnel or agency or university that has jurisdiction regarding the alleged event or action that is the basis of the grievance prior to filing a formal internal grievance. The informal discussion shall not be part of grievances related to disciplinary actions as well as non-disciplinary separation due to unavailability.

B. Disciplinary action and non-disciplinary separation due to unavailability grievances shall bypass the Informal Discussion and proceed directly to the formal internal grievance process. Disciplinary action grievances (i.e., dismissal, suspension without pay, demotion) that include both an allegation of unlawful discrimination, harassment, or retaliation and an allegation that the disciplinary action lacks just cause shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. Likewise, a grievance that involves both a separation due to unavailability and an allegation of unlawful discrimination, harassment or retaliation shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. After the EEO Informal Inquiry process is completed, the employee may pursue, under the procedures below, all remaining grievable issues that are eligible to be considered in the formal grievance process.

C. Grievances that are untimely filed or do not contain a grievable issue as defined in Section 4 of this policy shall not proceed through the grievance process. Grievable issues that have not been substantiated or responded to by the agency shall still be permitted to proceed through the grievance process.

Grievance Policy (cont.)

§ 6. Unlawful Discrimination, Harassment, or Retaliation Grievance Procedures

§ 6.1. Option 1: EEO Informal Inquiry for Unlawful Discrimination, Harassment or Retaliation[1]

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee (hereafter referred to as complainant) alleging unlawful discrimination, harassment or retaliation shall first file a complaint with the agency Equal Employment Opportunity (EEO) Officer or other designated personnel within **15 calendar days** of the alleged discriminatory or retaliatory act that is the basis of the complaint.

If the complainant alleges facts that would constitute unlawful discrimination, harassment, or retaliation as prohibited by law, the complaint will be investigated as a part of the agency's EEO Informal Inquiry. The investigation will determine if the facts related to the allegations support a finding of reasonable cause, or no reasonable cause, to believe unlawful discrimination, harassment, or retaliation occurred.

The EEO Informal Inquiry should be completed in a prompt timeframe **not to exceed 90 calendar days.** The agency has **75 calendar days** from receipt of the complaint to investigate and respond to the complainant, unless the complainant and the employer mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension shall not exceed **15 calendar days**.

If there is reasonable cause to believe that unlawful discrimination, harassment, or retaliation occurred, management shall attempt to take appropriate action to resolve the matter. The agency shall inform the Complainant in writing regarding the conclusions of the EEO Informal Inquiry, including applicable appeal rights. If the complaint is successfully resolved, the complainant will sign a letter of agreement with the agency detailing the terms of the resolution. The agency shall ensure that the terms of the agreement under the control of the agency are implemented. If the complaint is not successfully resolved, the Complainant has 15 calendar days from receipt of the written conclusions of the EEO Informal Inquiry to file a formal grievance, which will commence with Step 1 mediation. If the complainant has not been sent a response from the agency after 90 calendar days from the

[1] Any employee, regardless of whether they are exempt from the SHRA, may utilize the EEO Informal inquiry process to raise a complaint related to discrimination, retaliation, or harassment. This does not allow employees exempt from the provisions of N.C.G.S. § 126-34.01 and § 126-34.02 to proceed to the formal internal grievance process.

Grievance Policy (cont.)

agency's receipt of the EEO Informal Inquiry, the complainant may continue the process by filing a formal grievance.[2]

At any point in the grievance process, the complainant/grievant has the right to bypass discussions with or review by the alleged offender. Time spent in the EEO Informal Inquiry is not a part of the formal internal grievance process.

§ 6.2. Option 2 - External Filing of a Discrimination Charge

The complainant alleging unlawful discrimination, harassment or retaliation has the right, at any time, to bypass or discontinue the EEO Informal Inquiry or the formal internal grievance process and file a charge directly with the Equal Employment Opportunity Commission (EEOC). The complainant may not, however, file a contested case with the Office of Administrative Hearings if the internal process has not been completed. Information about filing an EEOC charge and deadlines for filing the charge can be found at: https://www.eeoc.gov/filing-charge-discrimination and the EEOC Public Portal at https://publicportal.eeoc.gov or by calling the EEOC regional offices located in Raleigh, Greensboro and Charlotte at 1-800-669-4000.

Information about filing through the Civil Rights Division of the Office of Administrative Hearings can be found at: https://www.oah.nc.gov/civil-rights-division or by calling 984-236-1850.

§ 6.3. Option 3 - Simultaneous Internal and External Filing of a Discrimination Charge

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee may file simultaneously with the Equal Employment Opportunity Commission at any point in either the EEO Informal Inquiry or the formal internal grievance process.

§ 7. Informal Discussion

A request for an Informal Discussion must occur within **15 calendar days** of the alleged event or action that is the basis of the grievance. Prior to filing a grievance about

[2] The 15 calendar day period in which a complainant must file a formal grievance to continue the process does not begin until a written response is received by the complainant.

Grievance Policy (cont.)

any issue, excluding unlawful discrimination, harassment or retaliation, disciplinary actions, and non-disciplinary separation due to unavailability, the employee shall first discuss the grievable issue with the immediate, or other appropriate supervisor in the employee's chain of command, or other appropriate personnel or agency that has jurisdiction regarding the alleged event or action that is the basis of the grievance.

The employee must clearly declare to the supervisor or other appropriate personnel that the Informal Discussion request is regarding an alleged event or action that is the basis of a potential grievance. The supervisor or other appropriate personnel shall confirm the intention of the requested Informal Discussion with the employee before beginning discussions.

This informal process shall be completed within **15-calendar days** after the request for an Informal Discussion is made by the employee. However, if progress is being made toward a successful resolution to the dispute or if there are occurrences that are unavoidable or beyond the control of either party (e.g. illness), both parties may agree to an extension. This extension must be agreed to in writing and approved by HR.

The supervisor or other appropriate personnel shall notify Human Resources when an employee requests an Informal Discussion. The supervisor or other appropriate personnel is responsible for attempting to resolve the grievable issue with the employee. Human Resources shall serve as a content and procedural resource during these discussions and will work with both parties to strive for a timely resolution.

The outcome of the Informal Discussion shall be communicated to the employee and Human Resources by the supervisor or other appropriate personnel in writing. If the issue is not successfully resolved or if no written response is provided within the **15 calendar day** timeframe, the employee may proceed by filing a formal grievance. An employee has **15 days** from the date the informal discussion process concludes (either by receiving a written response or by the time frame, including agreed upon extended timeframes, ending with no written response) to file a formal internal grievance. Time spent in the Informal Discussion is not a part of the formal internal grievance process.

Grievance Policy (cont.)

§ 8. Grievance Process for Disciplinary Actions

Disciplinary action grievances, to include dismissal, demotion, suspension without pay, as well as non-disciplinary separation due to unavailability shall bypass the Informal Discussion and proceed directly to the formal internal grievance process.

§ 9. Formal Internal Grievance Process

The employee must begin the formal internal grievance process by filing a written grievance request to the Human Resources Director or designee within the agency in accordance with the Employee Grievance Policy. The employee must complete any of the required informal processes within the stated time frames. The employee must file a formal grievance within 15 calendar days of the alleged event or action that is the basis of the grievance or within 15 days of receiving a response at the conclusion of any informal process(es). Mediation is Step 1 in the formal internal grievance process.

§ 10. Step 1 - Mediation

Mediation is the process in which a grievant and an agency respondent use a neutral third party(ies) to attempt to resolve a grievance. Mediation provides the grievant and the agency respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution.

§ 10.1. Mediation Process

OSHR maintains a process to assign mediators to grievances upon agency request. The agency shall submit the request for mediation within **3 business days** of receipt of the grievance. The mediation process shall be concluded **within 35 calendar days** from the filing of the grievance unless the grievant and the agency mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party.

Any extension of Step 1 will not extend the **90-calendar day** timeline.

§ 10.2. Location and Time Allocation

Mediation shall be conducted in a location identified by the agency. The manner in which the mediation is conducted, either virtually, telephonic or in-person, shall be approved by the OSHR Mediation Coordinator or designee. The mediation shall be

Grievance Policy (cont.)

scheduled for an amount of time determined by the mediator(s) to be sufficient. Mediation may be recessed by the mediator(s) and reconvened at a later time.

§ 10.3. Limited to Office of State Human Resources-Approved Mediators

Only OSHR-approved mediators will mediate grievances for State agencies. OSHR will maintain a pool of qualified mediators to facilitate mediations. Mediators will not be selected from the agency requesting the mediation.

§ 10.4. Mediation Attendees

The following individuals may attend a mediation:

- The grievant;
- The designated agency representative serving as the respondent who has the authority to negotiate an agreement, as appropriate, on behalf of the agency; and
- The OSHR-appointed mediator(s).
- The OSHR Statewide Mediation Coordinator or designees may attend mediations as observers.

Emergency substitution of a mediator must be approved by the OSHR Mediation Coordinator or designee. Attorneys and other advisors may not attend the mediation. Either the grievant or respondent may ask for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.[3]

§ 10.5. Post Mediation

When an agreement is reached, the following shall occur:

- The grievant and the respondent will sign a Mediation Agreement that states the terms of agreement and is a legally binding document.

[3] Rules of Mediation for Matters Before the Clerk of Superior Court, Rule 4: (d)

Grievance Policy (cont.)

- The original signed Mediation Agreement is provided to the agency Human Resources Office. A copy of the signed Mediation Agreement is provided to the grievant, respondent and the OSHR Mediation Coordinator.
- The agency shall ensure that terms of the mediation agreement under the control of the agency are implemented.

When an agreement is not reached (impasse), the following shall occur:

- The grievant and the respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
- The original signed Notice of Impasse is provided to the agency Human Resources Office. A copy of the signed Notice of Impasse is provided to the grievant, the respondent and the OSHR Mediation Coordinator.
- Before signing the impasse form, the agency shall inform the grievant of the Step 2 grievance process, the corresponding Step 2 grievance form and that the filing must be received by the agency within 5 calendar days of the date on which mediation resulted in an impasse.

§ 10.6. Limitations on a Mediation Agreement

The Mediation Agreement shall serve as a written record and shall:

- Not contain any provision(s) contrary to State Human Resources Commission policies, administrative rules, and applicable State and Federal law;
- Not contain any provision(s) that exceeds the scope of the parties' authority; and
- Not be transferable to another State agency.

When mediation resolves a grievance but it is determined upon agency or OSHR review that one or more provisions of the Mediation Agreement do not comply with the State Human Resources Commission policies or rules or applicable State or Federal laws, the mediation shall be reconvened to resolve the specific issue(s). If the parties are unable to resolve the noncompliance issue(s), the mediation will impasse and the grievant may proceed to Step 2 of the internal grievance process. This will not extend the **90 calendar day** timeframe of the formal internal grievance process.

Should additional information or clarification be needed to effectuate the terms of the agreement, communication with all parties may occur remotely. If the mediator who

Grievance Policy (cont.)

facilitated the mediation is not available, the OSHR Mediation Coordinator or designee will have the authority to stand in place of the mediator in these communications.

§ 10.7. Confidentiality of Documents Produced in Mediation

All documents generated during mediation and any communications shared in connection with mediation are confidential to the extent provided by law.

§ 10.8. Mediation Agreement Approval

The approval of the Director of the Office of State Human Resources or designee is required for mediation agreements that need a personnel transaction to be processed, except where the only personnel action is the substitution of resignation for dismissal. If a mediation agreement involves an exception to State Human Resources Commission policy, the approval of the Director of the Office State Human Resources or designee is required.

Mediation agreements requiring OSHR approval shall follow OSHR Settlement Guidelines.

§ 10.9. Mediation Responsibilities

§ 10.9(a) Grievant Responsibilities

The grievant is responsible for:

- Attending the mediation as scheduled by the agency;
- Notifying and receiving approval from Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the grievant prevent attendance at the mediation;
- Preparing for the mediation by being able to provide clear and concise information regarding the issues surrounding the grievance and the remedies sought; and
- Making a good faith effort to resolve the grievance.

A grievant who has an unexcused failure to attend mediation as scheduled forfeits the right to proceed with the internal grievance process.

Grievance Policy (cont.)

§ 10.9(b) **Respondent Responsibilities**

The respondent is responsible for:

- Attending the mediation as scheduled by the agency;
- Notifying Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the respondent prevent attendance at the mediation;
- Preparing for the mediation by becoming knowledgeable regarding the issues surrounding the grievance and remedies sought;
- Consulting with management, Human Resources and/or legal counsel regarding possible areas of negotiation for grievance resolution; and
- Making a good a faith effort to resolve the grievance.

If a respondent has an unexcused failure to attend mediation as scheduled, the grievant may either proceed to Step 2 of the Formal Grievance Process or reschedule the mediation if time allows as determined by the OSHR Mediation Coordinator. if the mediation is not rescheduled, the agency must provide notice of appeal rights to the grievant and the Step 2 Grievance Form must be filed within 5 calendar days of the original date of mediation. This will not extend the 90 calendar day timeframe of the formal grievance process.

§ 10.9(c) **Agency Human Resources Responsibilities**

The agency is responsible for:

- Administering the mediation program within the agency;
- Appointing an agency mediation coordinator, and other personnel as needed, to manage and schedule mediations;
- Ensuring that the grievant receives appropriate information about the mediation process;
- Designating a qualified and informed agency representative to serve as the respondent for each mediation who will have the authority to negotiate an agreement, as appropriate, on behalf of the agency that resolves the grievance;
- Ensuring that the selected respondent is adequately prepared for the mediation and has had discussions with management and Human Resources to identify possible areas of negotiation for grievance resolution;

Grievance Policy (cont.)

- Ensuring appropriate personnel (management, Human Resources and/or legal counsel) are available to respond to any issues that may arise during the course of the mediation;
- Designating appropriate personnel to be available to review the terms of the draft agreement to ensure it is complete, complies with State Human Resources Commission policies or rules or applicable State or Federal laws, and contains the necessary information for implementation;
- Ensuring confidentiality of the mediation to the extent provided by law;
- Identifying suitable locations for mediations;
- Using only OSHR-approved mediator(s) for each mediation session;
- Reimbursing mediators for travel at state-approved rates;
- Providing nominees for consideration who meet the qualifications set forth by OSHR to be trained as OSHR mediators; and
- Working with agency management to obtain funding for the initial and ongoing training of agency nominated mediators.

§ 10.9(d) Office of State Human Resources Responsibilities

The Office of State Human Resources is responsible for:

- Developing and maintaining mediation procedures and forms;
- Establishing mediator eligibility and training requirements;
- Maintaining a pool of qualified mediators;
- Providing employment mediation trainings;
- Maintaining a process for assigning mediators upon agency request;
- Ensuring that mediators adhere to the OSHR Mediator Code of Conduct; and
- Conducting ongoing studies/analyses to evaluate program effectiveness.

§ 11. Step 2 – Hearing

§ 11.1. Hearing Officer or Hearing Panel Process

If mediation does not result in a resolution at Step 1, the grievant is entitled to proceed to Step 2 of the internal grievance process. The Step 2 grievance form must be received by the agency within **5 calendar days** of the date on which mediation resulted in an impasse. Human Resources will notify the grievant of the opportunity to present

Grievance Policy (cont.)

the grievance to a reviewer(s) outside of the grievant's chain of command, e.g., Hearing Officer or Hearing Panel. The hearing process shall be concluded within **35 calendar days** of filing Step 2 of the grievance process unless the grievant and the agency mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension of Step 2 will not extend the **90 calendar day** timeline.

§ 11.2. Right to Challenge Appointed Hearing Officer or Hearing Panel Members

The grievant shall have one opportunity to challenge the appointed Hearing Officer or up to 2 members of the Hearing Panel if the grievant believes they cannot render an unbiased recommendation due to a real or perceived conflict of interest. The grievant must submit the basis for the challenge in writing pursuant to their agencies' established process, within **5 calendar days** of the date the grievant receives notification of the name(s) of the Hearing Officer or Hearing Panel. Management will review the challenge and replace the Hearing Officer or Hearing Panel members as appropriate.

§ 11.3. Hearing Attendees

- The grievant who initiated the grievance;
- The Hearing Officer or Hearing Panel members;
- Witnesses giving testimony, as approved by the Hearing Officer or Hearing Panel Chair; and
- Appropriate agency and HR representatives.

Attorneys and other advisors may not attend the hearing. Either party may ask the Hearing Officer or the Hearing Panel Chair for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the hearing by any participant, except as approved by management in accordance with agency process. .

§ 11.4. Grievance Presented to Hearing Officer or Hearing Panel

The Hearing Officer or Hearing Panel Chair will preside over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which

Grievance Policy (cont.)

the grievance is based and the remedies sought. Each party shall be given a fair opportunity to present evidence on the issues to be heard and to question witnesses.

§ 11.5. Proposed Recommendation for Final Agency Decision

The Hearing Officer or Hearing Panel Chair will draft a proposed recommendation, including an explanation and justification to support the recommendation, for a Final Agency Decision. The proposed recommendation will be submitted to the Agency Head or designee. The Agency Head or designee shall submit their proposed recommendation for a Final Agency Decision to the Director of the Office of State Human Resources (Director) or designee within the **35 calendar day** timeframe for the Step 2 hearing process. The Agency Head may provide a memorandum with comments on the proposed recommendation to the Director or designee.

§ 11.6. Office of State Human Resources Review

The Director of the Office of State Human Resources or designee shall review the proposed recommendation for a Final Agency Decision based on established criteria. The Director or designee may approve as written or may provide recommendations for modification or reversal within **10 calendar days** of the receipt of the proposed recommendation. The proposed Final Agency Decision shall not become final or be issued until reviewed and approved by the Office of State Human Resources.

§ 11.7. Final Agency Decision

The agency shall issue the Final Agency Decision to the grievant within **5 calendar days** of receipt of the Office of State Human Resources review of the proposed recommendation. The Final Agency Decision shall be issued in writing **within 90 calendar days** of the initial filing of the grievance.[4] The Final Agency Decision shall include information about applicable appeal rights.

[4]The requirement to issue the Final Agency Decision (FAD) within 90 calendar days of the filing date is met when the agency transmits the FAD to the grievant within 90 calendar days. The grievant does not have to receive the FAD within 90 days to meet the requirement.

Grievance Policy (cont.)

§ 11.8. Settlement Approval

The approval of the Director of the Office of State Human Resources or designee is required for settlements that need a personnel transaction to be processed, except where the only personnel action is the substitution of a resignation for a dismissal. If a settlement involves an exception to the State Human Resources Commission policy, the approval of the Director of the Office of State Human Resources or designee is required.

§ 11.9. Hearing Responsibilities

§ 11.9(a) Grievant Responsibilities

The grievant is responsible for:

- Attending the hearing as scheduled by the agency;
- Notifying and receiving approval from Human Resources, in advance of the scheduled hearing, if occurrences that are unavoidable or beyond the control of the grievant prevent attendance at the hearing; and
- Preparing for the hearing by being able to present clear and concise information regarding the issues surrounding the grievance and remedies sought.

A grievant who has an unexcused failure to attend a hearing as scheduled forfeits the right to proceed with the internal grievance process.

§ 11.9(b) Hearing Officer/Hearing Panel Chair Responsibilities

The Hearing Officer/Hearing Chair is responsible for:

- Calling the hearing to order and establishing the process for the proceedings;
- Maintaining order and decorum;
- Presiding over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which the grievance is based, and the remedies sought
- Ensuring that all parties are allotted adequate time to present evidence and question witnesses; and

Grievance Policy (cont.)

- Submitting a proposed recommendation for a Final Agency Decision on all grievable matters raised by the grievant.[5]

§ 11.9(c) Agency Human Resources Responsibilities

The agency is responsible for:

- Establishing the use of either a Hearing Officer or a Hearing Panel;
- Administering the hearing process within the agency;
- Ensuring that all parties receive appropriate information about the hearing process;
- Establishing a process for the grievant to challenge the appointed Hearing Officer or Hearing Panel members;
- Consulting with OSHR on the proposed Final Agency Decision recommendation; and
- Issuing a Final Agency Decision.

§ 12. Appeal to the Office Of Administrative Hearings

§ 12.1. Agency Requirements to Notify Grievant of Appeal Rights

The Final Agency Decision shall inform the grievant in writing of any applicable appeal rights through the Office of Administrative Hearings for contested case issues. The grievant must be informed of the following:

- The appeal is made by filing a "Petition for a Contested Case" hearing with the Office of Administrative Hearings;
- The appeal to the Office of Administrative Hearings must be filed within 30 calendar days after the grievant receives the FAD; and
- A fee is charged for filing a Petition for a Contested Case Hearing.

§ 12.2. Grievant Access to the Office of Administrative Hearings

If the grievant has completed the internal grievance process and is not satisfied with the Final Agency Decision, the grievant may file a Petition for a Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be

[5] A hearing officer may not decline to hear a grievable issue raised by the grievant solely because the agency did not complete the informal inquiry process within the deadline stated in this Policy.

Grievance Policy (cont.)

appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.

A Petition for Contested Case Hearing must be filed within 30 calendar days after the grievant receives the FAD. The grievant may file the appeal at:

Office of Administrative Hearings
1711 New Hope Church Road (mailing and physical address)
Raleigh, NC 27609
984-236-1850

Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: http://www.ncoah.com/hearings/ or by calling 984-236-1850.

§ 13. Responsibilities for the Employee Grievance Policy

§ 13.1. Agency Human Resources Responsibilities

Each agency shall:

- Adhere to the Employee Grievance Policy as adopted by the State Human Resources Commission;
- Develop and communicate internal grievance procedures as needed;
- Provide current employees and new hires with access to the Employee Grievance Policy;
- Notify all employees of any change to the agency grievance process no later than 30 calendar days prior to the effective date of the change;
- Enter all grievance data in the State's HR/Payroll System as events occur; and
- Provide employee grievance data to OSHR as requested.

§ 13.2. Office of State Human Resources Responsibilities

The Office of State Human Resources shall:

- Present the Employee Grievance Policy to the State Human Resources Commission for approval at any time modifications are made;
- Notify agencies of changes to this policy once approved by the State Human Resources Commission.
- Provide consultation and technical assistance to agencies as needed; and

Grievance Policy (cont.)

- Conduct ongoing studies/analyses to evaluate policy effectiveness.

§ 14. Written Responses

When required to provide a written response, it is advisable for agency human resources staff to confer with agency legal counsel regarding customized, appropriate content of the various responses to the employee.

Agencies should confer with their legal counsel on when a letter would be considered received by the employee.

§ 15. Savings Clause

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

§ 16. Sources of Authority

- N.C.G.S. § 126-4(9) authorizes the State Human Resources Commission to establish policies and rules on "[t]he investigation of complaints and the issuing of §such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified."
- N.C.G.S. § 126-34.01 states that employees with a grievance "shall follow the grievance procedure approved by the State Human Resources Commission."
- N.C.G.S. § 126-34.02 is the statute establishing the grievance appeal process.
- N.C.G.S. § 126-4(17) and § 126-34.2 authorize the State Human Resources Commission, to establish policies and rules for alternative dispute resolution procedures.

Grievance Policy (cont.)

- N.C.G.S. § 126-25 sets out the process for a State employee or applicant to object to material in their employee file.
- N.C.G.S. § 126-35 authorizes the State Human Resource Commission to adopt rules subject to approval of the Governor defining just cause for disciplinary actions.
- 25 NCAC 01J .1302 sets grievance procedure requirements for agencies and universities.

§ 17. History of This Policy

Date	Version
October 1, 2001	Revised to include as grievable issues violation of the FLSA, Age Discrimination Act, FMLA or ADA. (Delete "Failure to follow systematic procedures in reduction in force (not alleging discrimination)."
February 1, 2011	The 2010 General Assembly passed House Bill 961 which, among other things, made the disciplinary letter public information. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.
June 1, 2012	Revised to reflect the changing roles of the State Personnel Commission and the Office of Administrative Hearings in rendering a Decision and Order in contested cases. The Alternative Dispute Resolution Procedures were removed from the policy. There were also other minor editorial and policy clarification changes.
December 1, 2013	(Approved at the October 17 Commission Meeting) Policy replaces two grievance policies (Employee Appeals and Grievances and Employee Mediation and Grievances Process)..Policy was change to comply with the law change that resulted from ratification of HB 834. • Creation of two informal grievances processes for alleged unlawful discrimination, harassment or retaliation and for policy violations

Grievance Policy (cont.)

	• Mediation is the first step of the internal grievance process. • Step 2: Review by a Hearing Officer or Hearing Panel • Hearing Officer/Panel drafts recommendation for Final Agency Decision • Recommendation will be reviewed by the Director of the Officer of State Human Resources • Final agency decision shall be issued in writing within 90 calendar days of the initial filing.
December 1, 2013	(Approved at the December 12 Commission Meeting) As a result of feedback received from various agencies concerning the Dec 1 policy changes approved at the Oct 17 commission meeting, additional changes were made to strengthen and provide additional clarity to the grievance policy. The commission approved a 12-1-2013 retroactive effective date to replace the previous policy they approved effective on that same date. This replaces the previous approved policy.
August 6, 2020	Policy reviewed by Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on August 6, 2020. • Policy was updated to include the protected classes of gender identity and sexual orientation following the U.S. Supreme Court decision in Bostock vs. Clayton County. • Term Mediation Director changed to Mediation Coordinator.
February 16, 2023	• Expand the timeline for the EEO Informal inquiry to 90 days total to be consistent with the Administrative Code. Agencies would have **75** calendar days from receipt of the complaint to complete an investigation plus 15 additional calendar days if the complainant agrees. • If the complainant has not been sent a response by the agency within 90 calendar days after agency received the complaint, complainant may continue the process by filing a formal grievance.

Grievance Policy (cont.)

	• Adding "attempt to": If the letter finds reasonable cause to believe that unlawful actions occurred, "…management shall **attempt to** take appropriate action to resolve the matter." • Clarify that agency grievance policies are supplemental in nature. • Add National Guard preference to list of issues that may be grieved at the agency level only. • Add a section identifying the limited set of situations where an exempt managerial employee can file a grievance to OAH. These situations are specified by law (N.C.G.S. § 126-5(c7) and § 126-34.1(a)(2)), and would now be mentioned expressly in the policy. Specifically state that any employee, regardless of whether they are exempt from the SHRA, may utilize the EEO Informal Inquiry process to raise a complaint related to discrimination, retaliation, or harassment. This does not allow employees exempt from the provisions of N.C.G.S. § 126-34.01 and § 126-34.02 to proceed to the formal internal grievance process. • Adding language to clarify time periods in which employees have to act to move through steps of the grievance process. • Changed language re: prohibition of recording in mediations to match the Rules of Mediation. • Adds language to clarify what occurs if the respondent has an unexcused failure to attend a mediation. • Adds sources of authority.

I. POLICY

It is the policy of The University of North Carolina that the grievance process exists to allow for prompt, fair and orderly resolution of disputes arising out of employment. The University of North Carolina has therefore adopted this University SHRA Employee Grievance Policy to further these goals as approved by the State Human Resources Commission.

II. OBJECTIVES

In establishing this University SHRA Employee Grievance Policy, the University seeks to achieve the following objectives:

A. Provide procedural consistency across The University of North Carolina;
B. Ensure SHRA employees have access to an internal process to address grievable issues timely, fairly, cost effectively, and without fear of reprisal; and
C. Resolve workplace issues efficiently and effectively.

III. DEFINITIONS

The following are definitions of terms used in this policy:

TERM	DEFINITION
Applicant	A person (including a current State employee) who submits an application for an initial hire, promotion or reemployment for a SHRA position within the University.
Career State Employee	A State employee who is in a permanent position with a permanent appointment and has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the North Carolina Human Resources Act for the immediate 12 preceding months. Employees who are hired by a State agency, department or university in a sworn law enforcement position and who are required to complete a formal training program prior to assuming law enforcement duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months.
Complainant (EEO only)	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates an informal complaint through the Equal Employment Opportunity (EEO) Informal Inquiry process.
Contested Case Issue	A grievable issue that may be appealed to the Office of Administrative Hearings (OAH).
EEO/AA Officer	The University Officer responsible for Equal Employment Opportunity / Affirmative Action.
Equal Employment Opportunity Informal Inquiry (EEO Informal Inquiry)	An informal process for addressing allegations of unlawful discrimination, harassment, or retaliation that may facilitate a resolution prior to the filing of a grievance. This process is equivalent to the institution's internal complaint process for allegations of a violation of an institution's non-discrimination and equal opportunity policy. *[Note: Complaints or reports of Title IX Sexual Harassment and appeals of Title IX determinations of responsibility are investigated and resolved through the institution's Title IX complaint process.]*

TERM	DEFINITION
Final University Decision (FUD)	The final decision authorized by the Chancellor (or by the President for SHRA employees at the UNC System Office) or their designee that concludes the internal grievance process.
Formal Internal Grievance Process	The process available to an applicant, probationary State employee, former probationary State employee, career State employee or former career State employee to file a formal grievance based on issues that are defined as grievable by State statute.
Formal Internal Grievance Process Timeframe	The internal grievance process must be completed within 90 calendar days. Time spent in the Informal Discussion and the EEO Informal Inquiry process is not included in the 90 calendar day timeframe.
Grievable Issue	A statutorily defined workplace event or action as defined by State statute as grievable that allows an eligible employee to challenge the alleged workplace event or action through established grievance procedures for resolution.
Grievant	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates a grievance, including EHRA Law Enforcement Officers and applicants for EHRA Law Enforcement Officer positions.
Hearing Officer	An officer appointed by the Chancellor or designee to oversee the proceedings of a hearing and submit a proposed recommendation for a FUD.
Hearing Panel	A University appointed panel of no less than three members selected to conduct a hearing. The designated panel chair has the responsibility to oversee the proceedings of the hearing and submit a proposed recommendation for a Final University Decision.
Impasse	An Impasse occurs when Mediation does not result in an agreement.
Informal Discussion	An informal process for addressing grievable issues that may facilitate a resolution prior to the filing of a formal internal grievance and the process for addressing issues for which one may not file a formal internal grievance.
Mediation	The process in which the Grievant and Respondent use an approved Office of State Human Resources (OSHR) mediator to attempt to resolve a grievance in a mutually acceptable manner. Responsibility for resolving the grievance rests with the parties.
Mediation Agreement	The written agreement resulting from the successful resolution of a grievance reached in Mediation. The Mediation Agreement is legally binding on both parties.
Mediator	A neutral third party(s) approved by OSHR whose role is to guide the mediation process, facilitate communication, and assist the parties to generate and evaluate possible outcomes for a successful resolution. A Mediator does not act as a judge and does not render decisions.
Probationary or Time-Limited State Employee	A State employee who is exempt from certain provisions of the North Carolina Human Resources Act only because the employee has not been continuously employed by the State for the time period required to become a Career State Employee.

TERM	DEFINITION
Respondent	A designated University representative who will have the authority to negotiate an agreement on behalf of the University to resolve a grievance.
Title IX Sexual Harassment	A type of unlawful discrimination which is described under Title IX of the Education Amendments of 1972 at 34 C.F.R. 106.30(a) (2020). Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following: a) An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct; b) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or c) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). (34 C.F.R. 106.30(a) (2020)). This is distinct from sexual harassment as defined by Title VII of the Civil Rights Act of 1964. 42 U.S.C. 2000e
University	A constituent institution or employer unit within the University of North Carolina System.

IV. GRIEVABLE ISSUES AND WHO MAY GRIEVE[1]

A. The following issues may be grieved at the <u>University level only</u> and through the Informal Discussion process. The employee cannot proceed to the formal internal grievance process.

WHO MAY FILE	GRIEVABLE ISSUE
1) Career State employee or former career State employee	a) Overall performance rating of less than "meets expectations" or equivalent as defined in the University SHRA Performance Appraisal Policy b) Denial of request to remove inaccurate and misleading information from personnel or applicant file (excludes the contents of a performance appraisal and written disciplinary action) c) Items covered in the University's AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2) d) Denial of National Guard preference as provided for by law
2) Probationary or former probationary state employee	a) Denial of request to remove inaccurate and misleading information from personnel or applicant file (excludes the contents of a performance appraisal and written disciplinary action)

[1] Complaints or reports of Title IX Sexual Harassment and appeals of Title IX determinations of responsibility are investigated and resolved through the institution's Title IX complaint process.

	b) Items covered in the University's AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2) c) Denial of National Guard preference as provided for by law.
3) Applicant for University employment (initial hire, promotion, or reemployment)	a) Denial of request to remove inaccurate and misleading information from applicant file (excludes the contents of a performance appraisal and written disciplinary action) b) Items covered in the University's AA/EEO statement which promote inclusion and diversity, but not within the definition of unlawful discrimination, harassment, or retaliation as contained in NCGS 126-34.02 (b) (1) and (2) c) Denial of National Guard preference as provided for by law.

The following issues must first be grieved through the formal internal University process. If the Grievant is not satisfied with the Final University Decision, the Grievant may appeal to the Office of Administrative Hearings.

WHO MAY FILE	GRIEVABLE ISSUE
1) Career State employee or former career State employee	a) Dismissal, demotion or suspension without pay for disciplinary reasons without just cause b) Involuntary non-disciplinary separation due to unavailability c) All issues listed below that are grievable by a probationary or former probationary employee d) All issues listed below that are grievable by an applicant for University employment e) Denial of reemployment or hiring due to denial of reduction-in-force priority as required by law (NCGS 126-7.1) f) Denial of promotional opportunity due to failure to give priority consideration for promotion to a Career State employee as required by law (NCGS 126-7.1)
2) Probationary State employee or former probationary State employee	a) Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law) b) Denial of veteran's preference as provided for by law c) Any retaliatory personnel action for reporting improper government activities ("whistle blower") as contained in Article 14 of NCGS 126 d) Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment e) Retaliation against an employee for protesting (objecting to or supporting another person's objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment

3) Applicant for University employment (initial hire, promotion, or reemployment)	a) Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law) b) Denial of veteran's preference as provided for by law c) Unlawful discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation, if the applicant believes that he or she has been discriminated against in his or her application for employment d) Retaliation for protesting (objecting to or supporting another person's objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been retaliated against in his or her application of employment

V. GRIEVANCE PROCESS FOR ALL GRIEVABLE ISSUES[2]

A. A grievance or complaint must be initiated in accordance with this policy within **15 calendar days** of the alleged event or action that is the basis of the grievance.

   a. Any grievance or complaint that alleges unlawful discrimination, harassment, or retaliation shall be addressed and completed through the University Equal Employment Opportunity (EEO) Informal Inquiry process before being considered in the formal internal grievance process.

   b. All grievable issues, except for issues pertaining to discrimination, harassment, retaliation, disciplinary actions, and non-disciplinary separation due to unavailability, must first be discussed with the immediate or other appropriate supervisor in the employee's chain of command or other appropriate personnel or agency or University that has jurisdiction regarding the alleged event or action that is the basis of the grievance prior to filing a formal internal grievance.

   c. Informal Discussion shall not be part of grievances related to disciplinary action or to non-disciplinary separation due to unavailability; both shall proceed directly to the formal internal grievance process.

B. Disciplinary action and non-disciplinary separation due to unavailability grievances shall bypass the Informal Discussion and proceed directly to the formal internal grievance process. Disciplinary action grievances (i.e., dismissal, suspension without pay, demotion) that include both an allegation of unlawful discrimination, harassment, or retaliation, and an allegation that the disciplinary action lacks just cause shall first be addressed through the University EEO Informal Inquiry process before proceeding to the formal internal grievance process. Likewise, a grievance that involves both a separation due to unavailability and an allegation of unlawful discrimination, harassment, or retaliation shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. After the EEO Informal Inquiry process is completed, the employee may pursue all remaining grievable issues that may be considered in the formal internal grievance process if pursued by the employee per the procedures below.

C. Grievances that are untimely filed or do not contain a grievable issue as defined in Section IV of this policy shall not proceed through the grievance process. Grievable issues that have not been substantiated or responded to by the institution shall still be permitted to proceed through the grievance process.

[2] Complaints or reports of Title IX Sexual Harassment and appeals of Title IX determinations of responsibility are investigated and resolved through the institution's Title IX complaint process.

D. Institutions have the discretion to administer grievances alleging:

1) denial of request to remove inaccurate and misleading information from personnel or applicant file, and/or
2) an overall performance rating of less than "meets expectations" or equivalent as defined in the University SHRA Performance Appraisal Policy,

through this University SHRA Employee Grievance Policy or to establish a separate dispute resolution process. These issues are not appealable to the Office of Administrative Hearings.

VI. UNLAWFUL DISCRIMINATION, HARASSMENT, OR RETALIATION GRIEVANCE PROVISIONS

A. Option 1 -- EEO Informal Inquiry Process for Unlawful Discrimination, Harassment or Retaliation[2]

An applicant for State employment, probationary State employee, former probationary State employee, career State employee, or former career State employee (hereafter referred to as Complainant) alleging unlawful discrimination, harassment, or retaliation shall first file a complaint with the University Equal Employment Opportunity (EEO)/Affirmative Action (AA) Officer or other designated personnel within **15 calendar days** of the alleged discriminatory, harassment or retaliatory act that is the basis of the complaint.

If the Complainant alleges facts that would constitute discrimination, harassment, or retaliation as prohibited by law or university policy, the complaint will be investigated under the institution's existing non-discrimination/equal opportunity investigatory process (hereafter referred to as the EEO Informal Inquiry). The EEO/AA Officer or other designated personnel will investigate the complaint and determine if the facts related to the allegations support a finding of reasonable cause, or no reasonable cause, to believe that unlawful discrimination, harassment, or retaliation occurred.

The EEO Informal Inquiry should be completed in the timeframe defined by the institution's non-discrimination/equal opportunity policy **not to exceed 90 calendar days**. The institution has **75 calendar days** from receipt of the complaint to investigate and respond to the complainant, unless the complainant and the employer mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension shall not exceed **15 calendar days.**

If there is reasonable cause to believe that discrimination, harassment, or retaliation as prohibited by law or university policy occurred, management shall appropriate action toward resolving the matter.

The EEO/AA Officer shall inform the Complainant in writing regarding the conclusions of the investigation, including applicable appeal rights.

If the complaint is successfully resolved, the complainant will sign a letter of agreement with the institution detailing the terms of the resolution. The institution shall ensure that the terms of the agreement under the control of the institution are implemented.

If the complaint is not successfully resolved, the Complainant has 15 calendar days from receipt of the conclusions of the investigation to file a formal internal grievance, which will commence with Step 1 mediation.

If the complainant has not received a response from the institution after 90 calendar days from the institution's receipt of the EEO Informal Inquiry request, then the complainant may continue the process by filing a formal internal grievance.

At any point in the grievance process, the Complainant/Grievant has the right to bypass discussions with or review by the alleged offender. Time spent in the EEO Informal Inquiry process is not part of the formal internal grievance process.

B. Option 2 -- External Filing of a Discrimination Charge

The Complainant alleging discrimination, harassment or retaliation as prohibited by law or university policy has the right, at any time, to bypass or discontinue the EEO Informal Inquiry process or the formal internal grievance process and file a charge directly with the Equal Employment Opportunity Commission (EEOC) or the Office of Administrative Hearings - Civil Rights Division (OAH-CRD). The Complainant may not, however, file a contested case with the Office of Administrative Hearings - Hearings Division if the internal process has not been completed. Filing deadlines may vary.

Information about filing an EEOC charge and deadlines for filling the charge can be found at: http://www.eeoc.gov/employees/charge.cfm or by calling the EEOC regional offices located in Raleigh, Greensboro and Charlotte at 1-800-669-4000.

Information about filing through the Civil Rights Division of the Office of Administrative Hearings can be found at: http://www.ncoah.com/civil/ or by calling 984-236-1850.

C. Option 3 – Simultaneous Internal and External Filing of a Discrimination Charge

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee may file simultaneously with the EEOC at any point in either the EEO Informal Inquiry process or the formal internal grievance process.

VII. INFORMAL DISCUSSION

A request for an Informal Discussion must occur within **15 calendar days** of the alleged event or action that is the basis of the grievance. Prior to filing a grievance about any issue which does not involve an allegation of unlawful discrimination, harassment, or retaliation and does not involve a disciplinary action or a non-disciplinary separation due to unavailability, the employee shall first discuss the grievable issue with the immediate supervisor, other appropriate supervisor in the employee's chain of command, or other appropriate personnel or agency or University that has jurisdiction regarding the alleged event or action that is the basis of the grievance. The university institution's Human Resources Office ("the institution HR Office") may develop internal procedures to administer and coordinate any Informal Discussion process.

The employee must clearly declare to the supervisor or other appropriate personnel that the Informal Discussion request is regarding an alleged event or action that is the basis of a potential grievance. The supervisor or other appropriate personnel shall confirm the intention of the requested Informal Discussion with the employee before beginning the process.

The informal process should be completed within a **15 calendar day** after the employee requests the Informal Discussion. However, if progress is being made toward a successful resolution to the dispute or if unavoidable circumstances (e.g. illness, academic calendar) require an extension in the timeframe, both parties may agree to an extension. This extension must be agreed to in writing and approved by the institution HR Office.

The supervisor or other appropriate personnel shall notify the institution HR Office when an employee requests an informal discussion. The supervisor is responsible for attempting to resolve the grievable issue with the employee.

The institution HR Office will serve as a content and procedural resource advisor during these discussions, and work with both parties to strive for a timely resolution to the workplace dispute. The outcome of the informal discussions must be clearly communicated to the employee by the supervisor or other appropriate personnel in writing.

If the Informal Discussion is unsuccessful in resolving the grievable issue, or if no written response is provided by the supervisor within the **15 calendar day** timeframe (including any agreed-upon extensions), then the employee may proceed by filing a formal internal grievance, if eligible. Time spent in the Informal Discussion with Supervisor is not a part of the formal internal grievance process.

VIII. FORMAL GRIEVANCE – STEP 1 MEDIATION

The formal internal grievance process begins when a Grievant files a formal internal grievance request in accordance with the University SHRA Employee Grievance Policy. The Grievant must begin the formal internal grievance process by filing a written grievance to the Human Resources Director or designee within the University. The Grievant must complete any required informal processes within the stated time frames before filing a formal internal grievance.

The University, upon approval by OSHR, has the discretion to bypass Step 1 and proceed directly to Step 2 in situations involving discipline for jeopardizing campus safety, personal misconduct, or other similar egregious workplace issues. A decision to request bypassing mediation must be approved by the University Human Resources Office and authorized by the Chancellor or President. The decision to bypass Step 1 only occurs after careful consultation with parties involved in the workplace dispute.

The employee must file a formal internal grievance request within 15 calendar days of the alleged event or action that is the basis of the grievance or within 15 days of receiving a response at the conclusion of any informal process(es).

A. Purpose of Mediation

Mediation provides the Grievant and the University Respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution.

B. Mediation Process

University Human Resources shall submit the request for mediation within **3 business days** of receipt of the grievance. The mediation process shall be concluded within **35 calendar days** from the filing of the grievance unless the Grievant and the University mutually agree in writing to extend the time due to extenuating circumstances. Any extension of Step 1 will not extend the **90 calendar day** timeline.

C. Location and Time Allocation

Mediation shall be conducted in a location identified by the University. The manner in which the mediation is conducted, whether virtually, telephonic or in-person, shall be approved by the OSHR Statewide Mediation Coordinator or designee. The mediation shall be scheduled for an amount of time determined by the Mediator(s) to be sufficient. Mediation may be recessed by the Mediator(s) and reconvened at a later time.

D. Office of State Human Resources-Approved Mediators

Only OSHR-approved Mediators will mediate SHRA (employees subject to the State Human Resources Act) grievances for Universities. OSHR will maintain a pool of qualified Mediators to facilitate mediations. Mediators will not be selected from the University requesting the mediation.

E. Mediation Attendees

The following individuals may attend a mediation:

1) Grievant
2) Respondent
3) The OSHR-appointed Mediator(s).
4) The OSHR Statewide Mediation Coordinator and designees may attend Mediations as observers.

Emergency substitution of a Mediator must be approved by the OSHR Statewide Mediation Coordinator or designee. Attorneys and other advisors may not attend the mediation. Either the Grievant or Respondent may ask for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

F. Post Mediation

1) If an agreement is reached, the following shall occur:

   a) The Grievant and the Respondent will sign a Mediation Agreement that states the terms of agreement and is a legally binding document.

   b) The original signed Mediation Agreement is provided to the University Human Resources. A copy of the signed Mediation Agreement is provided to the Grievant, Respondent and the OSHR Statewide Mediation Coordinator.

   c) Human Resources will review the provisions of the Mediation Agreement to assure that the terms comply with the State Human Resources Commission policies or rules, University policies or rules, and applicable State or federal law.

   d) Human Resources will ensure that terms of the Mediation Agreement that are under the control of the University are implemented.

   e) The Mediation Agreement shall be maintained on file for three years.

2) If an agreement is not reached (Impasse), the following shall occur:

   a) The Grievant and the Respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.

   b) The original signed Notice of Impasse is provided to the University Human Resources Office. A copy of the signed Notice of Impasse is provided to the Grievant, the respondent and the OSHR Statewide Mediation Coordinator.

   c) Prior to signing the impasse form, the University must provide the Grievant information regarding Step 2 of the formal internal grievance process and inform the Grievant that the Step 2 filing must be received by the University within **5 calendar days** of the date on which the mediation resulted in impasse.

   d) The Notice of Impasse shall be maintained on file for three years or until any known litigation is completed.

G. Confidentiality of Documents Produced in Mediation

All documents generated during mediation and any communications shared in connection with mediation are confidential to the extent provided by law.

H. Limitations on a Mediation Agreement

The Mediation Agreement shall serve as a written record and shall:

1) Not contain any provision(s) contrary to State Human Resources Commission policies, administrative rules, University policies or rules, and applicable state and federal law;

2) Not contain any provision(s) that exceeds the scope of the parties' authority; and

3) Not be transferable to another state agency or University.

4) When Mediation resolves a grievance but it is determined upon review by University Human Resources or OSHR that one or more provisions of the Mediation Agreement do not comply with the State Human Resources Commission policies or rules, University policies or rules, or applicable State or federal laws, Mediation shall be reconvened to resolve the specific issue(s). This will not extend the **90 calendar day** formal grievance period. If the parties are unable to resolve the noncompliance issue(s), the mediation will reach impasse and the Grievant may proceed to Step 2 of the formal internal grievance process. The time resolving a mediation agreement does not extend the 90 calendar day timeframe for the formal internal grievance process.

5) Should additional information or clarification be needed to implement the terms of the Mediation Agreement, communication with all parties may occur remotely. In the event the Mediator that facilitated the mediation is not available, the OSHR Statewide Mediation Coordinator or designee will have the authority to stand in place of the Mediator in these communications.

I. Mediation Agreement Approval

The approval of the Director of State Human Resources or designee is required for mediation agreements that need a personnel transaction to be processed, except where the only personnel action is the substitution of resignation for dismissal. If a mediation agreement involves an exception to State Human Resources Commission policy, the approval of the Director of State Human Resources or designee is required. Mediation agreements requiring OSHR approval shall follow the OSHR Settlement Guidelines.

J. Mediation Responsibilities

1) Grievant Responsibilities

a) Attending the mediation as scheduled by the University;

b) Preparing for the mediation by being able to communicate clear and concise information regarding the issues surrounding the grievance and the remedies sought;

c) Notifying and receiving approval from University Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the Grievant prevent attendance at the mediation; and

d) Making a good faith effort to resolve the grievance.

A Grievant who has an unexcused failure to attend mediation as scheduled forfeits the right to proceed with the internal grievance process.

2) Respondent Responsibilities

a) Attending the mediation as scheduled by the University;

b) Preparing for the mediation by becoming knowledgeable regarding the issues surrounding the grievance and remedies sought;

c) Notifying and receiving approval from University Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the respondent prevent attendance at the mediation;

d) Consulting with management, Human Resources and/or legal counsel regarding possible areas of negotiation for grievance resolution; and

e) Making a good a faith effort to resolve the grievance.

If a Respondent has an unexcused failure to attend mediation as scheduled, the Grievant may either proceed to Step 2 of the formal internal grievance process or reschedule the mediation if time allows as determined by the OSHR Mediation Coordinator. If the mediation is not rescheduled, the agency must provide notice of appeal rights to the grievant and the Step 2 Grievance Form must be filed within 5 calendar days of the original date of mediation. This will not extend the 90 calendar day timeframe of the formal grievance process.

3) University Human Resources Responsibilities

a) Administering the mediation program within the University;

b) Appointing a University Mediation Coordinator, and other personnel as needed, to manage and schedule mediations;

c) Ensuring that the Grievant receives appropriate information about the mediation process;

d) Designating a qualified and informed University representative to serve as the Respondent for each mediation and who will have the authority to negotiate an agreement on behalf of the University that resolves the grievance;

e) Ensuring that the Respondent is adequately prepared for the mediation to understand possible areas of negotiation for grievance resolution;

f) Ensuring appropriate personnel (management, Human Resources or legal counsel) are available to respond to any issues that may arise during the course of the mediation;

g) Designating appropriate personnel to be available to review the terms of the draft agreement to ensure it is complete, complies with State Human Resources Commission policies or rules or with applicable State or Federal laws, and contains the necessary information for implementation;

h) Reinforce the expectations for confidentiality of the Mediation;

i) Identifying suitable locations for Mediations;

j) Using only OSHR-approved Mediator(s) for each mediation session;

k) Reimbursing Mediators for travel at state-approved rates;

l) Providing nominees for consideration that meet the qualifications set forth by OSHR to be trained as OSHR mediators; and

m) Assuming financial responsibility for the initial and ongoing training of University nominated mediators.

4) Office of State Human Resources Responsibilities

a) Developing and maintaining mediation procedures and forms;
b) Establishing mediator eligibility and training requirements;
c) Maintaining a pool of qualified mediators;
d) Providing employment mediation training;
e) Maintaining a process for assigning mediators upon University request;
f) Ensuring that mediators adhere to the OSHR Mediator Code of Conduct; and
g) Conducting ongoing studies/analyses to evaluate program effectiveness.

IX. FORMAL GRIEVANCE – STEP 2 – HEARING PANEL/HEARING OFFICER

A. Hearing Process

If Mediation does not result in a resolution at Step 1, the Grievant has the ability to proceed to Step 2 of the internal grievance process. Human Resources will notify the Grievant of the opportunity to present the grievance orally to a Hearing Panel/Hearing Officer outside of the employee's chain of command. The Step 2 filing must be received by the University HR Office within **5 calendar days** of the date of the completion of mediation. The hearing process generally shall be concluded within **35 calendar days of filing Step 2 of the grievance**.

B. Right to Challenge Appointed Hearing Officer or Hearing Panel Members

The Grievant has one opportunity to challenge the appointed Hearing Officer or up to 2 members of the Hearing Panel if the Grievant believes they cannot render an unbiased recommendation due to a real or perceived conflict of interest. The Grievant must submit the basis for the challenge in writing, in accordance with the institution's established process, within 5 calendar days of receiving notification of the name(s) of the Hearing Officer/Panelists. Human Resources will review the challenge and replace the member(s) as appropriate.

C. Hearing Attendees

1) The Grievant who initiated the grievance;
2) Hearing Officer or Hearing Panel members;
3) Witnesses, as approved by the Hearing Officer or Hearing Panel Chair in accordance with the University process; and
4) Appropriate University and HR representatives. Attorneys and other advisors cannot attend the hearing.

Stenographic recording, audiotape, videotape, recording devices, and transmission devices are not permitted during the hearing unless approved by the Chancellor or designee of a constituent institution, or unless approved by the President or designee for the UNC System.

D. Hearing Participant Responsibilities

1) Grievant Responsibilities

a) Attending the hearing as scheduled by the University;
b) Notifying and receiving approval from Human Resources, in advance of the scheduled hearing, if occurrences that are unavoidable or beyond the control of the Grievant prevent attendance at the hearing;
c) Preparing for the hearing by being able to present clear and concise information regarding the issues surrounding the grievance and remedies sought; and
d) A Grievant who has an unexcused failure to attend a hearing as scheduled forfeits the right to proceed with the internal grievance process.

2) Hearing Officer/Hearing Panel Chair Responsibilities

a) Calling the hearing to order and establishing the process for the proceedings;
b) Maintaining order and decorum;
c) Ensuring that all parties are allotted adequate time to present evidence and question witnesses; and
d) Submitting a proposed recommendation with documentation for a Final University Decision addressing all matters raised by the Grievant.

3) University Human Resources Responsibilities

a) Establishing the use of either a Hearing Panel/Hearing Officer;
b) Administering the hearing process within the University;
c) Providing that all parties receive appropriate information about the hearing process;
d) Establishing a process for the Grievant to challenge the appointed Hearing Officer or Hearing Panel members;
e) Consulting with OSHR on the proposed Final University Decision Recommendation; and
f) Issuing a Final University Decision

E. Grievance Presentation

1) The Hearing Officer or Hearing Panel Chair will preside over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which the grievance is based, and the remedies sought.

2) Each party shall be given a fair opportunity to present evidence on the issues to be heard and to question witnesses.

3) A hearing officer may not decline to hear a grievable issue raised by the grievant solely because the agency did not complete the informal inquiry process within the deadline stated in this Policy was not completed.

F. Hearing Report, Proposed Recommendation, and Final University Decision

1) The Hearing Panel Chair or Hearing Officer will draft a hearing report that includes a proposed recommendation for a Final University Decision (FUD), including justification to support the recommendation, and submit it to the Chancellor or designee.

2) The Chancellor or appropriate designee will forward the hearing report and the proposed FUD to UNC System Chief Human Resources Officer or designee for review.

3) The UNC System Chief Human Resources Officer or designee, in consultation with the Director of State Human Resources or designee, will review the hearing report and proposed FUD and will respond to the Chancellor or designee within **10 calendar days**.

4) The proposed FUD shall not be issued or become final until reviewed and approved by the Office of State Human Resources. Once approved, the Chancellor or designee must issue the FUD to the Grievant within **5 calendar days** of the approval and no later than **90 calendar days** from the date the grievance is filed.

5) For allegations of Title IX Sexual Harassment, the outcome of the Title IX complaint resolution process rather than this Formal Grievance Procedure, shall constitute the Final University Decision for an SHRA employee who is a Title IX complainant.

G. Settlement Approval

The approval of the Director of State Human Resources or designee is required for settlements that need a personnel transaction to be processed, except where the only personnel action is the substitution of a resignation for a dismissal. If a settlement involves an exception to State Human Resources Commission policy, the approval of the Director of State Human Resources or designee is required.

X. APPEAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS

A. University Requirements to Notify Grievant of Appeal Rights

The Final University Decision shall inform the Grievant in writing of any appeal rights through the Office of Administrative Hearings for contested case issues. The Grievant must be specifically informed of the following:

1) The appeal is made by filing a “Petition for a Contested Case” hearing with the Office of Administrative Hearings;

2) The appeal to the Office of Administrative Hearings must be filed within **30 calendar days** after the Grievant receives the Final University Decision; and

3) A fee is charged for filing a Petition for a Contested Case Hearing.

B. Grievant Access to the Office of Administrative Hearings

1) If the Grievant is not satisfied with the Final University Decision, the Grievant may file a Petition for Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.

2) A Petition for Contested Case Hearing must be filed within 30 calendar days after the Grievant receives the Final University Decision. The Grievant may file the appeal at:

Office of Administrative Hearings
1711 New Hope Church Road (Mailing and Physical Address) Raleigh, NC 27609
984-236-1850

3) Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: http://www.ncoah.com/hearings/ or by calling 984-236-1850.

XI. RESPONSIBILITIES FOR THE UNIVERSITY SHRA EMPLOYEE GRIEVANCE POLICY

A. University Human Resources, AA/EEO Office Responsibilities

1) Adhere to the University SHRA Employee Grievance Policy;
2) Develop and communicate internal procedures as needed;
3) Provide current SHRA employees and new SHRA hires with access to the University SHRA Employee Grievance Policy;
4) Notify SHRA employees of any change to the internal University grievance process no later than 30 calendar days prior to the effective date of the change;
5) Provide employee grievance reports to OSHR as requested.

B. Office of State Human Resources Responsibilities

1) Seek appropriate approval of the University SHRA Employee Grievance Policy any time modifications are made;
2) Notify institutions of changes to this policy once approved by the State Human Resources Commission.
3) Provide consultation and technical assistance to the UNC System as needed; and
4) Conduct ongoing studies/analyses to evaluate policy effectiveness and communicate results to improve the program effectiveness.

XII. Savings Clause

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

XIII. SOURCES OF AUTHORITY

A. N.C.G.S. 126-1.1 defines the Career State Employee.

B. N.C.G.S. 126-4(17) authorizes the State Human Resources Commission, to establish policies and rules for alternative dispute resolution procedures.

C. N.C.G.S. 126-25 sets out the process for a State employee or applicant to object to material in their employee file.

D. N.C.G.S. 126-35 authorizes the State Human Resource Commission to adopt rule subject to approval of the Governor for just cause for disciplinary actions and a process of appeal after the final agency decision.

E. 25 NCAC 01J .0600 sets out the process for disciplinary actions such as suspension and dismissal for State employees.

Employee Learning and Development Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina to provide learning and development for its employees designed to:

- Improve productivity, effectiveness and efficiency of government service by development and better utilization of talents, abilities and potential of employees.
- Help employees develop their knowledge, skills and abilities so that they might become better qualified to perform the duties of their present jobs and advance to more advance positions.
- Provide development for managers and supervisors capable of organizing and developing effective management systems for the accomplishment of each State agency's goals and objectives.
- Accelerate the development of culturally disadvantaged employees whose abilities and aptitudes are underutilized because of inadequate education and learning.
- Increase employee engagement and overall job satisfaction and reduce personnel turnover.
- Prepare employees to deal more effectively with growing social, scientific and economic problems faced by government by making use of advances in professional and vocational knowledge and technology.

§ 2. Responsibilities

Providing adequate learning and development of State employees can best be accomplished through the combined efforts of employees, supervisors on the job, departmental management and the Office of State Human Resources in cooperation with the State's institutions of higher education.

Employee Learning and Development Policy (cont.)

Learning and development programs should recognize the following roles:

Employees State employees at all levels ultimately retain an obligation for their own development and education and it is expected that employees will advance their own careers through appropriate self-education and self-improvement.

Managers and Supervisor. Managers and supervisors have the initial responsibility for learning and development of their employees. In fulfilling this responsibility, managers and supervisors should identify the individual learning needs of their employees, and work with employees to prepare and effect plans for their development. Such plans should make use of on-the-job learning including individual and group instruction by supervisors, formal learning and educational activities, and rotational assignments to provide greater depth and a wide base of experience.

Agencies Each agency has a responsibility for learning and developing its employees. It is responsible for assuring that learning programs geared to specific agency needs are planned, budgeted and established and that their employees participate in these programs. In addition, each agency shall work closely with other agencies and the Office of State Human Resources to promote the use of interagency learning programs and resources wherever possible.

Office of State Human Resources

The Office of State Human Resources shall be responsible for the State's role in overall planning, coordinating and review of learning and development programs and appropriate interagency training.

State Universities, the Community College System and Public Instruction The Office of State Human Resources and State agencies are responsible for utilizing the State's universities, community college system, and public instruction to the fullest degree possible in securing professional, management and vocational education to meet their personnel development needs.

§ 3. Use of Non-State Government Education and Training Sources Policy

State agencies may enter into contracts for education and learning through non-State government sources in accordance with established State Human Resources Commission policies and procedures. All contracts should follow policies and procedures issued by the Division of Purchase and Contract, Department of Administration.

Employee Learning and Development Policy (cont.)

§ 4. Determination of Need for Learning

Before State Human Resources authorizes education or learning through non-State government sources, the agency must have:

- Determine that agency employees do not possess the knowledge and skills to meet that educational or learning need, and
- Determine that learning is not available within State government to meet the agency's needs. Education and learning are not available when:
  - Existing programs in State government will not meet the need;
  - New programs cannot be established to meet need; and
  - Inquiry has failed to disclose availability of programs in other departments, State Human Resources, public education, higher education institutions or elsewhere in State government.

§ 5. Selection of Non-State Government Sources

When there is a choice between outside training sources, consideration will be given to the following factors:

- Competency to provide the particular learning needed.
- Geographic accessibility of the learning source.
- Availability of learning at the particular time or place it is needed.
- Comparative cost as determined by Division of Purchase and Contract policies and procedures.
- Practicality of administrative arrangement involved.
- The significance of accreditation.
- The advantages that might result from arrangements with the source when several equally acceptable are available.
- The consequences of using limited State resources versus none at all.

§ 6. Procedure for Approval of Non-State Sources

Should any State agency have an educational or learning need that cannot be met by resources within State government, the following steps must be followed:

Employee Learning and Development Policy (cont.)

1. The agency's learning needs and learning objectives must be defined. This should include an explanation of how the achievement of these learning objectives contributes to the agency's goals.
2. Upon agreement by the Office of State Human Resources that such learning cannot be obtained within State government resources, the Division of Purchase and Contract should be notified of the learning need through the submission of a justification memo 1 North Carolina Administrative Code 5C. This request should be coordinated through the agency's purchasing officer.
3. It must be documented in the justification memo that the educational or learning need cannot reasonably be met by any State government institution or agency. This should include a list of the agencies contacted and the responses of each agency.
4. The required learning will then be acquired in accordance with State Purchase and Contract Policy.

§ 7. Apprenticeship Learning

It is policy of the State of North Carolina to promote and encourage the establishment, maintenance and growth of apprenticeship programs to help meet the workforce needs of State government. All such programs shall be administered through and in accordance with policy and standards established by the U.S. Department of Labor in cooperation with the employing agency.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

It is compliant with the Administrative Code rules at:

- 25 NCAC 01K .0100

§ 9. History of This Policy

Date	Version
May 2, 1966	• Personnel administration - training and staff development. Provides a continuing developmental process so that competent

Employee Learning and Development Policy (cont.)

	and industrious employees are available to fill high level vacancies. • Each agency to determine its present and projected manpower needs, based on expansion of services and changing technology. • Each agency, within the limit of its resources, should encourage every employee to avail themselves of training opportunities. • The State Personnel Department will provide assistance and coordination in securing training resources, setting standards, determining needs, securing and disseminating information on resources for specialized training and will give advice concerning current methods and consult with agencies on training and development programs.
September 1, 1967	• Statement of objectives of the Management Development Program.
January 1, 1978	• Apprenticeship Training - This policy is to support and promote the establishment of apprenticeship programs where appropriate in State government and to inform agencies how they shall be administered through the State Personnel System.
November 1, 1990	• Revised policy on apprenticeship training to allow apprenticeship agreements although technically prohibited by policy forbidding employment contracts. Since required by GS 94, a clarifying exception is added which will permit their use in registered apprenticeship programs. Also, changes to assure that apprentices working against positions SPA are treated consistently in regard to appointment status, and receive the same employment benefits as other SPA employees.
June 4, 2020	• Revised to change the title from “Personnel Training and Development” to “Employee Learning and Development” because “training” is now referred to as “learning.”

Employee Learning and Development Policy (cont.)

	• Changed “more responsible” to “more advanced” since the employee may be moving up into a higher position. • Changed “Alleviate labor market shortages and reduce personnel turnover” to “Increase employee engagement and overall job satisfaction” because Talent Management is charged with increasing employee engagement not tracking personnel turnover and job shortages. • Changed “State Personnel Manual” to “State Human Resources Manual” throughout the document. • Deleted the last paragraph from the Apprenticeship “Learning” section as it is no longer applicable.

Employee Referral Bonus Pilot Program Policy

Contents:

NOTE: This is a pilot policy. It is intended to be an initial effort to develop a policy on a new topic, with the expectation that the policy will return to the Commission in the future for revisions when lessons are learned. OSHR anticipates that this policy would return to the Commission for further analysis no later than the second quarter of 2024.

§ 1. Purpose

The purpose of the Employee Referral Bonus Program is to provide an incentive to current state employees to refer potential applicants who are subsequently selected and hired for critical positions that have been determined to be in high demand and hard to fill.

§ 2. Eligibility

§ 2.1. Classifications

This program is available for both state agencies and University of North Carolina System institutions. (For the sake of simplicity, this policy will refer to both state agencies and university institutions interchangeably as "agencies.")

Under this initial pilot version of this policy, the referral bonus will be available only for certain classifications, at particular agencies, that the Office of State Human Resources — at the request of the agency — deems critical, in high demand and hard to fill, and

Employee Referral Bonus Pilot Program Policy (cont.)

suitable for a referral bonus program. Some factors used in determining if a classification is "hard to fill" shall include agency turnover, vacancy rate, number of positions in the classification, and scarcity of skills.

§ 2.2. **Referrals**

For eligible classifications, the application for employment shall include a supplemental question for the candidate applying for the position (a "referred candidate") to identify any current state employee who referred the candidate (a "referring employee"). The referred candidate must name the referring employee (or employees) on their application for employment for the referring employee to be eligible to receive a referral bonus.

Referrals can generate a bonus only if they are within an agency and classification approved for this referral bonus program.

The employee must be directly responsible for the successful recruitment of an employee in an eligible job which has been identified as being in high demand, hard to fill and critical to the agency's mission. Referred candidates shall only list state employees who were directly responsible for the candidate choosing to apply for the position. State employees shall not do anything that would cause candidates to list people as referrals who were not directly responsible for the candidate choosing to apply.

A referred candidate may list multiple referring employees. If a referred candidate lists more than one referring employee, the bonus is split pro rata between all eligible referring employees.

§ 2.3. **Referring Employees**

§ 2.3(a) **Types of Employees Who May Be Eligible**

Permanent full-time, part-time, time-limited, and probationary state employees may be eligible to receive a referral bonus within given guidelines. Temporary employees are not eligible to receive a referral bonus.

With one exception, employees who are exempt from the State Human Resources Act may not receive bonuses under this policy or be a referred candidate that causes someone else to receive a bonus. The exception is that although probationary employees are exempt from many provisions of the State Human Resources Act, probationary

Employee Referral Bonus Pilot Program Policy (cont.)

employees are subject to this Referral Bonus Policy. Probationary employees are not disqualified from receiving referral bonuses or causing others to receive referral bonuses.

§ 2.3(b) **Must Work at Same Agency to Be Eligible**

The referring employee must be a current employee of the same agency where the referred candidate will work. (The referring employee does not need to work in one of the referral-bonus-eligible classifications.) To be eligible, the referring employee must be working for the agency paying the referral bonus at the time the referral was made and at the time the referral bonus is to be paid, unless the referring employee is separated from the agency due to retirement prior to the time the referral bonus is to be paid.

§ 2.3(c) **No Active Disciplinary Actions**

An eligible referring employee must have no active disciplinary actions.

§ 2.3(d) **Referring Employees Must Not Be Involved in, or Supervise, the Hiring Process**

To be eligible, a referring employee may not be involved directly or indirectly in the hiring or selection process other than for the referral. Moreover, a referring employee may not have direct or indirect responsibilities over hiring, including human resources professionals and people who supervise human resources professionals. To be eligible, a referring employee also may not be in the direct or indirect management chain of the position for which someone is referred.

§ 2.3(e) **No Referral Bonuses for Immediate Family Members**

A referring employee may not receive a referral bonus for referring an immediate family member, as defined in the Selection of Applicants Policy.

§ 2.3(f) **Agencies Can Add Additional Eligibility Criteria**

A referring employee is eligible for a bonus for each referred candidate that is selected that meets the above criteria and any additional criteria established by the agency.

§ 2.4. **Referred Candidates**

§ 2.4(a) **Must Be Hired and Remain Employed**

To generate a bonus, the referred candidate must be hired to an eligible agency and classification approved for this referral bonus program, then stay at that position for no fewer than 90 days. State law requires that hired employees must meet the minimum eligibility requirements for the position and be among the most qualified in the referred applicant pool.

Employee Referral Bonus Pilot Program Policy (cont.)

§ 2.4(b) **No Bonuses for Recruiting Recent Employees or Current Applicants**

To generate a bonus, the referred candidate cannot be a former employee of the agency offering the referral bonus, unless they have not been employed in any permanent, time-limited, or temporary capacity for a period of at least one year.

In addition, referred candidates may not be a temporary employee, current state employee, current contractor to the agency, or a candidate with an active job application (without prior referral) on file with the recruiting agency.

If referred candidates revise their application for the same position or submit multiple applications to a position that is being continuously recruited, bonuses will be paid only to the references that were provided on the first application. If referred candidates apply to multiple positions in the same agency (for example, at different facilities) and list different referrals on different applications, bonuses will be paid only to the references that were listed for the position where the referred candidate was hired.

§ 2.4(c) **No Sharing of the Referral Bonus with the Candidate**

Referring employees are prohibited from sharing referral bonuses with referred candidates. Referring employees and referred candidates may not agree to share a referral bonus.

§ 3. **Amount and Payment of Referral Bonus**

§ 3.1. **Referral Bonus Amount**

Each agency participating in this program will set the amount of the referral bonus. However, a referral bonus for a single referred candidate may not exceed $1,000. Referral bonus amounts may be different for different classifications, so long as they do not exceed the maximum amount.

§ 3.2. **Limitation on Number of Referral Bonuses That Any Employee May Receive**

No referring employee may receive more than five referral bonuses under this policy per fiscal year. (When a bonus is split pro rata because a referred candidate lists more than one referring employee, only the resulting fraction of the bonus counts toward this limit.)

§ 3.3. **Payment**

A referral bonus payment shall not be considered as compensation in terms of contributions to and determination of benefits for any of the State's retirement system. A

Employee Referral Bonus Pilot Program Policy (cont.)

referring employee cannot receive any other/additional payment or thing of value in connection with any referral from a licensed or unlicensed private or public source.

All monetary awards are considered income for the employee and taxed accordingly. Agencies may not increase award totals by the amount of payroll taxes normally deducted from the employees' pay.

Referral bonus payments may be paid in a lump sum, no fewer than 90 days after the hire date, if the bonus is no more than $250. Bonuses greater than $250 shall be made in multiple payments based on the schedule below and criteria established by the agency. Payments cannot be made until the referred candidate has been employed for a minimum of 90 days. If the agency elects to have the payment split over multiple installments, the referring employee will receive the bonus only if, on the date of the installment, both the referring employee and the referred candidate are both still working for the agency.[1]

Schedule — A referral bonus greater than $250 shall be paid in three installments:

25% of the referral bonus awarded after three months from the hire date,

25% of the referral bonus awarded after six months from the hire date, and

50% of the referral bonus awarded at one year of continuous employment.

§ 4. Responsibilities

§ 4.1. Agency Responsibility

- All agency employees must make all hiring decisions without regard to whether a referral bonus would be awarded to any employee.
- Agencies must follow all state and federal laws and state policies related to posting, recruitment, selection, and hiring.
- Determine which classifications would be eligible for an employee referral bonus and submit to OSHR for approval.
- Establish agency procedures for receiving referrals from eligible employees and receiving information from referred candidates to determine eligibility for a referral bonus.

[1] The referring employee may still receive payment if they were separated from the agency due to retirement prior to the time the referral bonus is to be paid. Employees who separate from the agency for other reasons continue to not be eligible to receive the referral bonus.

Employee Referral Bonus Pilot Program Policy (cont.)

- Establish what criteria a referred candidate must satisfy prior to payment of a referral bonus to a referring employee.
- Set monetary amount of referral bonus and ensure the bonus is paid in the next payroll after the referred candidate has satisfied the agency's award criteria.
- Develop an agency procedure to track referrals from eligible employees for critical classifications and issue referral bonuses.
- Track payments of referral bonuses and report annually to the Office of State Human Resources.
- Resolve disputes arising from the administration of a referral bonus program.
- Communicate Employee Referral Bonus program to agency employees.

§ 4.2. **Office of State Human Resources Responsibility**

- Develop criteria for monitoring referral bonuses.
- Consult with agencies on procedures for referral bonuses.
- Maintain list of classifications for which a referral bonus may be offered.
- Review and assess the need for Referral Bonus Policy and procedures annually.

§ 5. How Long This Policy Lasts

- This policy will become effective February 15, 2023.
- This program may be discontinued at any time by an agency head (with respect to a particular classification or the agency as a whole) or by the Director of the Office of State Human Resources.
- When this program is discontinued, in whole or in part:
    - Any existing bonuses that were awarded before the program was discontinued will be paid out. However, no new referral bonuses will be issued for the agency or classification where the program was discontinued.
    - Hires will produce a referral bonus if an offer letter has already been sent out.
    - For the agency or classification where the program was discontinued, hires that have not yet generated an offer letter will not generate referral bonuses, even if an application listing a referral was made before the program was discontinued.

Employee Referral Bonus Pilot Program Policy (cont.)

§ 6. Miscellaneous Terms

- The referral award program is not grievable.
- There is no obligation by the State of North Carolina to make an offer of employment to any qualified party.
- Any hiring authority or responsible authority may terminate its offer at any point in the hiring or employment process.
- In cases where there has been a reasonable belief of a misrepresentation of credentials/skills or other relevant fact(s), the State may refuse to pay the referral bonus.
- Employees may be subject to disciplinary action, up to and including dismissal, for knowingly referring a candidate based on falsified or misleading qualifications.
- Employees may be subject to disciplinary action, up to and including dismissal, for any other violation of this policy.

§ 7. Sources of Authority

This policy is issued under the authority of:

- N.C.G.S. § 126-4(4) (authorizing the Commission to adopt rules or policies governing "[r]ecruitment programs designed to promote public employment … and attract a sufficient flow of internal and external applicants");
- N.C.G.S. § 126-4(5) (authorizing the Commission to adopt rules or policies governing "other matters pertaining to the conditions of employment"); and
- N.C.G.S. § 126-4(10) (authorizing the Commission to adopt "[p]rograms of employee assistance, productivity incentives … and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration").

§ 8. History of This Policy

Date	Version
December 8, 2022 (effective February 15, 2023)	First version

Employment Contracts Policy

Contents:

§ 1. Policy

(a) Except as to apprenticeship agreements executed according to the provisions of Article 1A, N.C.G.S. § 115D and except as to provisions of Paragraph (b) below, the following provisions apply to employment contracts:

(1) No employee shall be required, as a condition of employment subject to N.C.G.S. Chapter 126 to enter into a contractual arrangement with any state agency as defined in 25 NCAC 01A .0103 for employment with that agency.

(2) No state agency may require, as a condition of employment, that an employee agree, in writing or otherwise, to a minimum specified length of employment.

(3) No state agency may prohibit, as a condition of initial or continued employment, any employee from transferring to another state agency or university.

(4 No state agency may require, as a condition of employment, that an employee agree, in writing or otherwise, that a payment be made to the employing agency if a minimum specified period of employment is not met.

(5) No agency may require the repayment of the cost of job training required by the employing agency as a condition of continued employment.

(b) An agency that provides all or part of the cost of professional development seminars or other educational opportunities to employees that are not a requirement for the job and that are **in excess of $5000** may condition the provision of agency funds upon agreement of the employee to repay the funds subject to the following conditions:

(1) The employee is informed about the repayment provisions in advance,

(2) The amount of time that the agency expects the employee to remain employed is clearly specified and does not exceed one year,

Employment Contracts

(3) The prorated amount that the employee will have to repay for each month the employee leaves prior to the end of the term is specified in the agreement, and

Employment Contracts Policy (cont.)

(4) The terms of the agreement are reduced to writing and the employee and the human resources director both sign the agreement.

(5) "In excess of $5,000" is per agency payment.

Example:

In 2023, Jane Doe starts a 4-semester, 2-year masters' degree. Agency agrees to pay $4000 per semester, paid by the agency on successful completion of each semester.

- Question: Could the agency require Jane Doe to enter into an employment contract in 2023, when the masters' degree starts?
- Answer: **No**, because each payment (each semester) is $4,000, less than the $5,000 threshold.

Later, in 2026, Jane Doe asks the agency to pay for a $1500 professional development course.

- Question: Could the agency require Jane Doe to enter into an employment contract in 2026, when the agency pays for an additional $1500 course?
- Answer: **No**, because the $1,500 payment is less than the $5,000 threshold.

§ 2. Cross References

See the *Academic Assistance Policy and the Employee Learning and Development Policy* for additional, related information.

§ 3. Sources of Authority

- This policy is issued under N.C.G.S. § 126-4(5), (6) and 25 NCAC 01C .0215.
- This policy is compliant with Article 1A, N.C.G.S. Chapter 115D.

§ 4. History of This Policy

Date	Version
September 1, 1989	First version.
November 1, 1990	Added provision of paragraph 1 and 2 for apprenticeship agreements.
May 1, 2008	Revised policy to allow an agency to require repayment of a portion of the cost for optional training if the employee does not remain

Employment Contracts Policy (cont.)

	employed with the agency for a predetermined length of time. The employee would be informed of this requirement in writing along with details about the amount of time required to work.
October 1, 2020	Policy reviewed by the Recruitment Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. General editorial changes to text, grammar, and language. All changes were minor wording and format changes for clarification.
April 20, 2023	• Corrected statutory and code citations. See page 1. • The existing policy allows employment contracts requiring an employee to stay with the agency for a minimum specified length of employment if the agency pays for "in excess of $5000" for professional development seminars or other educational opportunities to employees that are not a requirement for the job. See page 1. The proposed revisions to the policy would specify that this $5,000 trigger is measured "per agency payment." See page 2. • Added cross references to other relevant policies. See page 2. • Added a source of authority section. See page 2

Employment Offers Policy

Contents:

§ 1. Internal Agency Procedures

In addition to the selection limitations and special considerations, each agency has internal procedures for applicant referral, interviewing, reference checking and other conditions that must be met before an employment offer is extended. The agency human resources office will provide these procedures.

§ 2. Position Vacancy

An appointment may be made only if a classified and budgeted vacancy exists in the position complement authorized for the agency. Questions about funds should be directed to the Office of State Budget and Management

§ 3. Cross-References

For appointments, see the Appointment Types and Career Status Policy.

For setting a salary for an employment offer, see the Pay Administration Policy.

§ 4. Accelerated Hiring Pilot Program

§ 4.1. Contingent Offers

Agencies are authorized to make job offers as soon as possible after the completion of interviews for a position. This includes, but is not limited to, offers contingent upon satisfactory reference checks or background checks.

OSHR will provide further guidance on ways to increase the speed of hiring no later than January 2024.

Employment Offers Policy (cont.)

§ 5. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(4) which authorizes the Commission to establish policies governing recruitment programs designed to promote public employment, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.
- N.C.G.S. § 126-4(6) which authorizes the Commission to establish polices governing the appointment, promotion, transfer, demotion, and suspension of employees.
- N.C.G.S. § 126-4(10) which authorizes the Commission to establish policies governing …programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration.
- Section 39.3(b) of the 2023 Appropriations Act, Session Law 2023-134 requiring the Commission to authorize agencies to make job offers as soon as possible after the completion of the interviews for a position. This pilot shall include, without limitation, authorizing agencies to make job offers that are contingent upon satisfactory reference checks and, if required, satisfactory background checks.

This policy is compliant with:

- 25 NCAC 01H .0634

§ 6. History of This Policy

Date	Version
December 1, 1995	First version. No previous history available.
November 1, 2013	HB 834 – Modernization of the Human Resources Act changed G.S. 126 to include a new definition for probationary period. The period changed from three to nine months to a consistent twenty-four months of continuous SHR employment in a permanent position.
August 23, 2017	This policy was updated to reflect August 2016 changes to the timeline for career status and probationary periods from 24 months to 12 months in conjunction with HB 495 and the extension of the probationary period for law enforcement officers and forensic scientist pursuant to HB 495 and HB 1044. Additionally, the term

Employment Offers Policy (cont.)

	trainee was removed as employees coming into State government will either be identified as probationary, permanent, or time limited.
August 6, 2020	Policy reviewed by Deputy Director – Recruitment and Rewards Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on August 6, 2020.
October 19, 2023	• Combined Sections 3, Appointment and 4, Salary Determination into one section, Cross References. • Deleted outdated policy language and replaced with references to the Appointment Types and Career Status Policy and the Pay Administration Policy. • Added a new Section 4, Accelerated Hiring. • Added a new Section 4.1, Contingent Offers, that authorizes agencies to make offers as soon as possible after the interview process, including making contingent offers. • Deleted Section 5, Final Commitments. • Added a Sources of Authority Section.

Equal Employment Opportunity Policy

Contents:

§ 1. Policy

The State of North Carolina provides equal employment opportunities to all employees and applicants for employment and prohibits discrimination, harassment or retaliation based on race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information, or disability. The State also recognizes that an effective and efficient government requires the talents, skills and abilities of all qualified and available individuals, and seeks opportunities to promote diversity and inclusion at all occupational levels of State government's workforce through equal employment opportunity (EEO) workforce planning initiatives.

The State is committed to ensuring the administration and implementation of all human resources policies, practices and programs are fair and equitable. State agencies, departments and universities shall be accountable for administering all aspects of employment, including hiring, dismissal, compensation, job assignment, classification, promotion, reduction-in-force, training, benefits and any other terms and conditions of employment in accordance with federal and State EEO laws and policies. Employees shall not engage in harassing conduct, and if harassing conduct does occur, it should be reported. Managers and supervisors maintain a critical role and responsibility in preventing and eliminating harassing conduct in our workplace. See the Unlawful Workplace Harassment Policy of the State Human Resources Manual for provisions related to unlawful harassment, including sexual harassment.

Equal Employment Opportunity Policy (cont.)

Acts of retaliation against an employee who engages in protected activity or the exercise of any appeal or grievance right provided by law will not be tolerated in our workplace.

§ 2. **Coverage**

Individuals protected by provisions of this policy are:

1. current employees;
2. former employees; and
3. job applicants.

§ 3. **Veterans**

Job discrimination of veterans shall be prohibited, and affirmative action shall be undertaken to employ and advance in employment eligible veterans in accordance with Article 13 of N.C.G.S. § 126 and N.C.G.S. § 128-15.

See the Veterans & National Guard Preference Policy in the State Human Resources Manual for provisions related to veteran's preference including the employment and advancement of protected veterans.

§ 4. **Office of State Human Resources Responsibilities**

The Office of State Human Resources (OSHR) shall:

1. establish the EEO Plan Requirements and Program Guidelines in accordance with federal and state laws to be followed by all agencies, departments and universities, to ensure commitment to and accountability for equal employment opportunity throughout State government;
2. review, approve and monitor all EEO plans and updates;
3. provide services of EEO technical assistance, training, oversight, monitoring, evaluation, support programs, and reporting to ensure that State government's work force is diverse at all occupational levels; and
4. develop and promote EEO programs and best practices to encourage consistent and fair treatment of all State employees; and 5. meet with agency heads, department heads, and university chancellors, Human Resources Directors and EEO

Equal Employment Opportunity Policy (cont.)

Directors/Officers annually to discuss the progress made toward reaching program goals.

§ 5. **Agency, Department and University Responsibilities**

Each Agency Head, Department Head and University Chancellor shall:

1. adhere to the policies and programs that have been adopted by the State Human Resources Commission and approved by the Governor;
2. ensure the agency, department or university's commitment to EEO is clearly communicated to all employees;
3. ensure that Human Resources policies and employment practices are implemented consistently and fairly;
4. designate an EEO Officer/Director who has access to the agency head, department head or university chancellor to be responsible for the operation and implementation of the EEO Plan;
5. provide the necessary resources to ensure the successful implementation of the EEO Program;
6. ensure each manager and supervisor has, as a part of his or her performance plan, the responsibility to comply with EEO laws and policies, and assist in achieving EEO goals established by the agency, department or university;
7. ensure the EEO Plan is designed in accordance with the EEO Plan Requirements and Program Guidelines as specified by the Office of State Human Resources;
8. ensure the EEO Plan is submitted by March 1st of each year to the Office of State Human Resources for review and approval as required by N.C.G.S. § 126-19;
9. ensure all employees are made aware of the EEO policy including the Unlawful Workplace Harassment Policy found in the State Human Resources Manual;
10. develop strategies to prevent unlawful workplace harassment and retaliation in the workplace;
11. ensure required employee notices describing Federal laws prohibiting job discrimination are posted in work locations where notices to applicants and employees are customarily posted and easily accessible to applicants and employees with disabilities;

Equal Employment Opportunity Policy (cont.)

12. maintain records of all complaints and grievances alleging discriminatory practices; and
13. ensure all newly hired, promoted, or appointed supervisors and managers complete required EEO training in accordance with N.C.G.S. § 126-16.1. See the Equal Employment Opportunity Diversity Fundamentals policy located in the State Human Resources Manual for information related to EEO training.

§ 6. Complaint Process

An individual covered by this policy who is alleging unlawful discrimination, harassment or retaliation may file a complaint following the process outlined in the Employee Grievance Policy located in the State Human Resources Manual. For the purpose of this policy, political affiliation is not a protected classification under federal EEO law but may be grieved pursuant to N.C.G.S. § 126-34.02 as a contested case after completion of the agency grievance procedure and the Office of State Human Resources review.

§ 7. Sources of Authority

- N.C.G.S. § 126-4(10);
- 25 NCAC 01L .0302; 25 NCAC 01L .0303 ;25 NCAC 01L .0304 ; 25 NCAC 01L .0306.

§ 8. History of This Policy

Date	Version
June 24, 1970	EEO policy approved. Provides equal employment opportunity for employment, promotion, demotion, transfer, lay-off, termination, training, salary increases. Does not require an employee to use an established grievance procedure in agency. In cases of discrimination, the employee may appeal directly to SPB.
December 13, 1972*	Formalized the Affirmative Action Program in employment.
August 2, 1974*	Affirmative Action Policy approved.

Equal Employment Opportunity Policy (cont.)

January 1, 1976	Policy revised to include provisions in State laws: age, political affiliation, and physical disability. Appeal procedure revised to incorporate provisions of new State Personnel Act.
November 1, 1976	Required agencies to submit to OSP requests to establish age, sex, or physical requirements as a bona fide occupational qualification rather than submitting directly to U. S. Dept. of Labor. OSP will submit to DOL.
July 1, 1977	Revised to indicate that employees who do not have five or more years of continuous state service do not have direct appeal to the State Personnel Commission on matters relating to political affiliation. (New amendment to State Personnel Act.)
October 1, 1977*	Revised AA policy to improve the State's leadership in its role in affirmative action. It is essentially designed to carry out the intent of Chapter 126-16.
February 1, 1978*	Revised to state that "three available applicants must be interviewed" thus bringing AA policy and CARS requirements of interviewing representatives of the ethnic, sex and handicapped composition comparable.
December 1, 1978	Protected age increased from 65 to 70.
October 1, 1978*	To assist in the evaluation of the State's Affirmative Action program, each State agency or institution shall provide the Commission with compliance information concerning investigations or other review made by the EEO, or through court proceedings, etc.
August 1, 1979*	Changed the wording to "as needed" instead of "monthly" regarding reporting progress.
October 1, 1980*	New flexible policy in regard to submission of affirmative action plans to OSP.
October 1, 1983	Revised to include special provisions for handicapped.
October 1, 1983*	To enhance the employment opportunities for persons with disabilities or handicapped individuals and to bring the State's policy in conformity with the National or Federal Regulations, etc.

Equal Employment Opportunity Policy (cont.)

October 1, 1984*	Policy Statement revised to add “preserve” EEO opportunities in (1) and add (2) assure more equitable representation of women, minorities and 2 the handicapped throughout all aspects of the State’s workforce. Program Implementation - State Level revised to add “performance appraisal (WPPR) and reduction-in-force”. Program Implementation Department Level revised to expand No. 6 and added Nos. 7, 8, and 9 as new items that must be included in each department’s affirmative action program. Compliance Review revised to require submission of plans October 1 of each year.
October 1, 1987	Selection” added to policy as well as “admin. of disciplinary policies or termination for cause.” “Handicapping conditions” added throughout.
October 1, 1987*	“Handicapping condition” added; AA Plan to meet requirements of EEO/AA Planning and Resources Guide. Allows for three-year plan under certain conditions.
April 1, 1988	Special Provisions for Communicable and Infectious Disease added.
November 1, 1988*	Date for submission of plans changed from October 1 to January 31.
March 1, 1994	Changed “permanent” to “career” in accordance with N.C.G.S. § 126.
December 1, 1995*	Change from Affirmative Action Program Plan to EEO Program & Plan.
May 31, 2001*	Revised to redefine Workforce Analysis.
July 1, 2006*	Advisory Note deleted in Item 5 since this provision has been approved permanently.
September 1, 2008	Added Advisory Note under the paragraph on Policy.
January 1, 2012	Genetic information was added to the policy where appropriate to conform to the Genetic Information Nondiscrimination Act of 2008 (GINA).
October 1, 2012	Added section Information.

Equal Employment Opportunity Policy (cont.)

December 1, 2013	Section on “Appeal Procedure” changed to refer employees to the Employee Grievance Policy found in Section 7 of the HR Manual.
June 1, 2015	The EEO Policy and the EEO Program and Plan Policy were combined into one consolidated EEO Policy. The combined policies include provisions of Executive Order No. 55 and EEOC provisions regarding reasonable accommodations for pregnancy as follows: • “Policy” statement includes reference to the Unlawful Workplace Harassment Policy found in Section 1 of the HR Manual. Duplication of the Unlawful Workplace Harassment Policy has been removed from the new policy. Feedback received during periodic review of existing rules indicated that “unlawful workplace harassment” needed to be maintained as a separate policy to ensure special emphasis on the program. 3 • “Definitions” were added at the end of the policy, to clarify various terminology found within the policy. These definitions mirror federal EEOC guidelines. • Pregnancy discrimination was not included in the previous policy, but has been added to the new policy. • Changed any references to “Agency and University” to now include Department, in accordance with Gov. McCrory’s Executive Order #55. • “Special Provisions” were eliminated (for Persons with Disabilities; Communicable Diseases; Exceptions Necessary to Prevent Spread of Disease). These are fully detailed within their own policies, in other sections of the NC State Human Resources Policy Manual. Special Provisions relative to “Age” and “Genetic Information” and information for “Bona Fide Occupational Qualification” were moved to the Definitions section of this policy. • “Appeal Procedure” was changed to “Complaint Process,” to mirror the terminology found in the recent revision of the Unlawful

Equal Employment Opportunity Policy (cont.)

	Workplace Harassment Policy. Refers employees to the Employee Grievance Policy found in Section 7 of the HR Manual. • The list of protected classes was amended to delete “creed,” as per HB 834 (Sess. Law. 2013-382). • Clarification was added related to complaints based on discrimination related to political affiliation. Federal law does not list political affiliation as a protected class. As a result, complaints related to political affiliation do not follow the same process as other EEO claims so this needs to be clarified in the EEO policy to avoid confusion. • Agency, Department and University responsibilities now include “ensure that each manager and supervisor has, as a part of his or her performance plan, the responsibility to comply with EEO Laws and policies and assist in achieving EEO goals established by the agency, department or university.” This requirement is stated in Gov. McCrory’s Executive Order #55. • Added reference to the Equal Employment Opportunity Policy located in Section 1 of the HR Manual for more information about required EEO training for supervisors and managers. • Added reference to EEO Directors to match terminology in Executive Order. Also, made modification to the appointment of EEO Directors, i.e., the reporting relationships that are acceptable, “as long as there is access to the Agency Head, Department Head or University Chancellor on EEO matters.” These changes are in accordance with Gov. McCrory’s Executive Order #55. • Added a requirement for OSHR to meet annually with agency heads/chancellors, HR Directors, and EEO Directors/Officers to EEO progress and goals to comply with Executive Order No. 55. • Incorporated advisory notes in the policy.
April 4, 2019	In alignment with Executive Order #24, the EEO policy was amended to add sexual orientation, gender identity and expression,

Equal Employment Opportunity Policy (cont.)

	and Veteran/National Guard status to the list of protected groups. Approved at the SHRC meeting on 4/4/2019. In addition, definitions removed from the policy. The definitions will be expanded and provided as a supplemental document.

Equal Employment Opportunity & Diversity Fundamentals Policy

Contents:

§ 1. Policy

The Equal Employment Opportunity Diversity Fundamentals (EEODF) is intended to provide State government executives, managers and supervisors with practical training that will assist them in becoming more effective managers and supervisors of an increasingly diverse workforce. The EEODF is intended to increase understanding among managers and supervisors of their roles and responsibilities in managing employees from different backgrounds and cultures, and the corresponding laws, policies and employment practices and techniques complementing this purpose. Supervisors and Managers hired, promoted or appointed on or after July 1, 1991 are required to participate in the EEODF. Supervisors and Managers appointed before July 1, 1991 are encouraged to participate in the EEODF. Agencies, departments and universities shall not be authorized to conduct or contract for substitute training to replace EEODF. EEODF training is designed to:

- Address and discuss the history and evolution of Equal Employment Opportunity concepts and principles.
- Assist managers and supervisors to incorporate their Equal Employment Opportunity responsibilities with other management responsibilities.
- Expose managers and supervisors to workplace equity and fairness issues.
- Review and discuss accepted management practices for valuing and managing diversity in the workplace.
- Provide understanding of how diversity can increase productivity and efficiency.
- Empower managers and supervisors to remain adaptable and flexible to meet the challenges of an ever changing and more diverse workforce.

Equal Employment Opportunity & Diversity Fundamentals Policy (cont.)

§ 2. **Definition**

Term	Definition
Supervisory position	positions in which the majority of the work performed is directing the work of other positions. These employees have the authority to assign work and to evaluate work; to hire employees; to discipline or dismiss employees; or have significant input into such actions.
Managerial positions	positions which manage established divisions or subdivisions of an agency. These employees direct the work of one or more supervisors and have the authority to hire, reward, discipline, or discharge employees. These employees may also provide suggestions for changes in policy to senior executives with policymaking authority.
Executive managerial positions	policy making positions. Employees in these positions are agency/department heads, university chancellors, deputies, assistants, vice-chancellors, and other policy makers. The employees in executive managerial positions are usually appointed or elected.
NOTE: For the purposes of this policy, the definition of supervisors, managers, and executives also includes the setting of performance expectations, conducting performance appraisal conferences and evaluating performance.	

Equal Employment Opportunity & Diversity Fundamentals Policy (cont.)

Incumbent Executives, Managers & Supervisors	Executive managers and supervisors hired or appointed into positions prior to July 1, 1991.
EEODF Candidates	A) Managers and supervisors hired on or after July 1, 1991 and who may or may not have served in a management role in state government. B) Incumbent executives, managers and supervisors hired or appointed into current positions prior to July 1, 1991. C) Incumbent executives, managers and supervisors promoted/appointed to a different management position on or after July 1, 1991

§ 3. **Agency Responsibilities**

Agencies shall:

- Enroll each supervisor or manager appointed on or after July 1, 1991 in the EEODF. The enrollment shall be within one year of their appointment.
- Provide their prorated share of the cost for supplies and resource materials.
- Verify candidate eligibility reports.
- Enroll incumbent managers and supervisors in the EEODF when space is available.
- Incorporate in their new employee orientation program a module of instruction designed to familiarize new employees with the agency's commitment to Equal Employment Opportunity.

Equal Employment Opportunity & Diversity Fundamentals Policy (cont.)

§ 4. Managers and Supervisors Responsibilities

Managers and supervisors shall:

- assure that their management practices are fair and that the work environment enhances equal employment opportunity; and
- attend and complete the EEODF in the prescribed time frame.

§ 5. Office of State Human Resources Responsibilities

Office of State Human Resources shall:

- conduct or approve all training, and
- fully administer the EEODF Program.

§ 6. Sources of Authority

- N.C.G.S. § 126-16.1

§ 7. History of This Policy

Date	Version
July 1, 1991	First version. This training requirement was originally created by the North Carolina General Assembly in 1991 (N.C.G.S § 126-16.1). The original course was entitled the Equal Employment Opportunity Institute (EEOI). Equal Employment Opportunity and Diversity Fundamentals (EEODF) is a mandatory training for all Managers and Supervisors with state agencies, departments, University of North Carolina system universities and institutions within one year of hire, promotion, or appointment on or after July 1, 1991. Managers and Supervisors hired before July 1, 1991 are strongly encouraged to complete EEODF training.
2016	The curriculum for the training was revised to make the course a blended training offering, and the name of the training was changed

Equal Employment Opportunity & Diversity Fundamentals Policy (cont.)

	from EEOI to Equal Employment Opportunity and Diversity Fundamentals (EEODF).
April 4, 2019	This policy updated is intended to reflect the name change as well as some other technical corrections to the training program.
June 4, 2020	This policy updated is intended to reflect the name change as well as some other technical corrections to the training program, and to update the policy history.

Extended Duty for Medical Personnel Policy

Contents:

§ 1. Policy

Critical shortages of coverage on evening and weekend shifts in certain medically related areas sometimes make it impossible to maintain an adequate staff to meet all workload requirements. In order to meet such workloads, an employee of the State who is exempt from the hours of work and overtime provisions of FLSA may, if the employee agrees, be scheduled to work additional hours beyond the regular work schedule and receive pay on a straight-time basis.

§ 2. Limitation on Hours

The number of extended duty hours will be limited to 20 hours per week.

§ 3. Pay

If such additional duty involves primarily the direct care and treatment of patients or other activities which can be performed only by the employee approved for extended duty, the employee may be paid for such additional time on a straight-time basis at a rate of pay to be determined by the nature of the duties to be performed.

Thus, an employee's rate of pay during the additional hours of work may be either higher, lower, or the same as the established rate of pay.

§ 4. Source of Funds

Usually, the source of funds for payment for such additional employment shall be the funds provided for a vacant position. Such a position shall be planned with specific work assignments and will have a proper classification and pay level. In other cases, there may be available budgeted special funds for additional hours of such service. In these cases, it

Extended Duty for Medical Personnel Policy (cont.)

may become necessary to determine specifically what the work assignments are to be and to arrive, through proper evaluation, at the correct rate of pay for those duties.

§ 5. List of Approved Positions

A list of professional medically related classes eligible to receive straight-time for extended duty beyond forty hours per week shall be approved and maintained within the Office of State Human Resources.

§ 6. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2)
- 25 NCAC 01D .1800

§ 7. History of This Policy

Date	Version
August 2,1974	First version - New policy
February 20, 1975	Policy extended to cover Physician Assistants and Nurse Practitioners.
August 1, 1995	Change the title of the policy to “Employment of Medical Personnel for Extended Duty. Extend the provision for paying additional straight-time for extended duty to all medically related areas for positions that are exempt from the FLSA. Limit the number of extended duty hours to 20 hours per week. Require OSP(sic) approval of the classes that are included.
October 1, 2020	Policy reviewed by Total Rewards – Salary Administration Division, to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on October 1, 2020.

Family and Medical Leave Policy

Contents:

§ 1. Purpose

Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring

Family and Medical Leave Policy (cont.)

generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men.

This Act provides reasonable unpaid (1) Family and medical leave for the birth of a child and to care for the newborn child; for the placement of a child with the employee for adoption or foster care; for the care of a child, spouse or parent who has a serious health condition; for the employee's own serious health condition; (2) Qualifying Exigency Leave for families of covered members and (3) Military Caregiver Leave.

§ 2. Definitions

Following are definition of terms used in this policy:

Parent: a biological, adoptive, step or foster father or mother or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child. This term does not include parents "in-law".

Child: a son or daughter who is:

- under 18 years of age, or
- is 18 years of age or older and incapable of self-care because of a mental or physical disability and who is:
- a biological child,
- an adopted child,
- a foster child (a child for whom the employee performs the duties of a parent as if it were the employee's child),
- a step-child (a child of the employee's spouse from a former marriage), • a legal ward (a minor child placed by the court under the care of a guardian), or
- a child of an employee standing in loco parentis.

Spouse: A husband or wife recognized under state law for purposes of marriage in the State in which the marriage was entered into. This definition includes an individual in a same-sex or common law marriage that was entered into in a State that recognizes such marriages. In the case of a marriage entered into outside of any State, the marriage is recognized if the marriage is valid in the place where entered into and could have been entered into in at least one State.

Family and Medical Leave Policy (cont.)

Incapable of Self Care - the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living including cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephone and directories, using a post office, etc.

Physical or Mental Disability: a physical or mental impairment that substantially limits one or more of the major life activities of an individual as regulated under 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA).

Serious Health Condition: an illness, injury, impairment, or physical or mental condition that involves:

1. inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical facility, including any period of incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment for or recovery from), or any subsequent treatment in connection with such impairment; or
2. continuing treatment by a health care provider involving one or more of the following:
   A. a period of incapacity as defined above of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
      (1) treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of or on referral by a health care provider; or
      (2) treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
      (3) the requirements in paragraph (a)(1) and (a)(2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit shall take place within seven days of the first day of incapacity.

Family and Medical Leave Policy (cont.)

(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(5) The term "extenuating circumstances" in paragraph A.(1) of this section means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider (i.e., no available appointments).

B. any period of incapacity due to pregnancy or for prenatal care, even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days (prenatal examinations, severe morning sickness)

C. any period of incapacity or treatment due to a "chronic serious health condition," even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days, which is defined as one:

(1) requiring periodic visits (at least two visits per year) for treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider;

(2) continuing over an extended period of time (including recurring episodes of a single underlying condition); and

(3) which may cause episodic rather than continuing period(s) of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

D. incapacity for a permanent or long-term condition for which treatment may not be effective (Alzheimer's, a severe stroke or terminal stages of a disease);

E. multiple treatments for restorative surgery or incapacity for serious conditions that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment (chemotherapy, radiation, dialysis, etc.)

Non-Serious Medical Conditions: Ordinarily, unless complications arise, the following are examples of conditions that do not meet the definition: common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, cosmetic treatments, etc. The following may meet the

Family and Medical Leave Policy (cont.)

definition if all other conditions of this section are met: restorative dental or plastic surgery after an injury or removal of cancerous growths, mental illness, allergies, or treatment from substance abuse.

Incapacity – inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

Treatment – examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical exams, eye exams, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to the health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FML.

Health Care Provider: a Doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of North Carolina, or any other person determined by statute, credential or licensure to be capable of providing health care services which include:

1. Physician assistants, Podiatrists, Dentists, Clinical psychologists, Clinical social workers, Optometrists, Nurse practitioners, Nurse midwives, Chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
2. Health care providers from whom state approved group health plans will accept certification of a serious health condition to substantiate a claim for benefits;
3. Foreign health care providers in above stated areas who are authorized to practice in that country and who are performing within the scope of the laws; and
4. Christian Science practitioners listed with First Church of Christian Scientists in Boston, Massachusetts.

In this situation, the employee cannot object to an agency requirement to obtain a second or third certification. For employees or family members receiving treatment through a Christian Science practitioner, an employee may not object to any requirement that the employee or family member submit to an examination (though not treatment) to obtain a second or third opinion.

Family and Medical Leave Policy (cont.)

Workweek: the number of hours an employee is regularly scheduled to work each week, including holidays.

Reduced Work Schedule: a work schedule involving less hours than an employee is regularly scheduled to work.

Intermittent Work Schedule: a work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually to accommodate some form of regularly scheduled medical treatment due to a single qualifying reason.

12-Month Period: the 12-month period measured forward from the date any employee's family and medical leave begins.

§ 3. Covered Employees and Eligibility

An employee's eligibility for family and medical leave shall be made based on the employee's months of service and hours of work as of the date leave is to commence.

An employee is eligible if:

Full-time, Permanent, probationary, or time-limited, or Part-time (half-time or more) Permanent, probationary, or time-limited	• has 12 months cumulative service with State government, including temporary service (See (1) and (2) notes below.), and • has been in pay status at least 1040 hours during the previous 12-months.
Temporary, intermittent, or part-time (less than half-time) Note: This leave shall be without pay.	• has 12 months cumulative service (See (1) and (2) notes below.), and • has been in pay status at least 1250 hours during the previous 12 months.

For the purpose of FML eligibility, State government is considered a single employer. Any employment , including temporary employment in a State agency position including employment through Temporary Solutions or other State agency administered temporary service, would be considered State service. State service does not include service with

Family and Medical Leave Policy (cont.)

SPA local government agencies, public schools, or community colleges. State service also does not include temporaries hired through private staffing agencies.

(1) Employment periods prior to a break in service of seven years or more shall not be counted in determining whether the employee has been employed by the agency for at least 12 months.

(2) USSERA-covered military service in the Regular Armed Forces, National Guard or reserves count as time worked to determine eligibility for FML.

§ 4. Amount of Leave and Qualifying Reasons for Leave

1. An eligible employee is entitled to a total of 12 workweeks, paid or unpaid, leave during any 12-month period:
   A. for the birth of a child and to care for the newborn child after birth, provided the leave is taken within a 12-month period following birth; or
   B. an expectant mother may also take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work, or requires a reduced work schedule;
   C. for the placement of or to care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following placement;
   D. for the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition, (also, see the Family Illness Leave Policy located in Section 5 of the Human Resources Manual for extended leave for up to an additional 52 weeks for these reasons);
   E. because the employee has a serious health condition that prevents the employee from performing one or more essential functions of the position; or
   F. because of any qualifying exigency. (See FMLA-Qualifying Exigency Policy located in Section 5 of the State Human Resources Manual.)
2. Military Caregiver Leave– An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a single 12-month period. (See FMLA-Military Caregiver Policy located in Section 5 of the State Human Resources Manual.)

Family and Medical Leave Policy (cont.)

3. Spouses in Same Agency- Family Medical Leave is provided for both spouses even if employed in the same agency.

§ 5. What counts towards the 12 or 26 weeks leave?

Paid or Unpaid Leave - All approved periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 (or 26, as appropriate) workweeks to which the employee is entitled. This includes leave taken under the Voluntary Shared Leave Policy.

Holidays- Holidays occurring during a FMLA period of a full week count toward the FMLA leave entitlement. Holidays occurring during a partial week of FMLA leave do not count against the FMLA leave entitlement, unless the employee was otherwise scheduled and expected to work during the holiday.

Agency Closure- If the agency closes for one or more weeks, the days that the agency is closed do not count against the employees' FMLA leave entitlement (e.g. a school closing two weeks for the Christmas holidays, or summer vacation).

Workers' Compensation Leave - If an employee is out on workers' compensation leave drawing temporary total disability, the time away from work is not considered as a part of the FMLA entitlement.

Compensatory Time – All compensatory time used shall be counted against the employee's FMLA leave entitlement. See the following Leave Charge Options.

§ 6. Leave Charges Options

In some cases, the employee has an option to exhaust leave or go on leave without pay. Use of paid leave shall be decided upon initial request of leave and used prior to going on leave without pay. Listed below are the options.

If leave is for:	the employee

Family and Medical Leave Policy (cont.)

Birth (applies to both parents) and child care after birth	may choose to exhaust all or any portion of sick leave and/or vacation/bonus leave or go on leave without pay during the period of disability. Only vacation/bonus or leave without pay may be used before and after the period of disability unless the sick leave policy becomes appropriate for medical conditions affecting the mother or child.
Adoption	may choose to exhaust available vacation/bonus leave(or any portion), a maximum of 30 days sick leave (see Sick Leave Policy), or go on LWOP.
Foster Care	may choose to exhaust available vacation/bonus leave (or any portion) or go on LWOP.
Illness of Child, Spouse, Parent	may choose to exhaust available sick and/or vacation/bonus leave, or any portion, or go on LWOP.
Employee's Illness	does not have the option of taking leave without pay if sick leave is available; however, the employee may use vacation/bonus leave in lieu of sick leave. If the illness extends beyond the 60day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.
Military Caregiver	See FML-Military Caregiver policy located in Section 5 of the State Human Resources Manual.
Qualifying Exigency	See FML-Qualifying Exigency policy located in Section 5 of the State Human Resources Manual.

Change in Work Schedule- An employee may not unilaterally change their work schedule in order to extend the period of paid leave. Example: An employee may not switch from a 40-hour schedule to a 30-hour schedule in order to lengthen their pay status.

Family and Medical Leave Policy (cont.)

Provision for Agencies in the BEACON HR/Payroll System- In compliance with the OSP FLSA policy, all agencies shall require FLSA “subject” employees to use overtime compensatory time prior to using vacation/bonus leave. In the BEACON HR/Payroll System, if an employee chooses to exhaust vacation/bonus leave in any of the following situations it shall be used after overtime compensatory time, on-call compensatory time, holiday compensatory time and travel compensatory time.

Family and Medical Leave Policy (cont.)

§ 7. Intermittent Leave or Reduced Work Schedule

Leave may be taken intermittently or on a reduced schedule for the following:

1. When medically necessary, to care for the employee's child, spouse, or parent who has a serious health condition, or because the employee has a serious health condition (This would also apply to next of kin to care for a service member - see FML-Military Caregiver policy located in Section 5 of the State Human Resources Manual.);
2. Because of any qualifying exigency (see FML-Qualifying Exigency policy located in Section 5 of the State Human Resources Manual.); or
3. When leave is taken after childbirth or for adoption/foster care, the employee may take leave intermittently or on a reduced schedule only if the agency agrees.

There is no minimum limitation on the amount of leave taken intermittently; however, the agency may not require leave to be taken in increments of more than one hour.

If leave is foreseeable, based on planned medical treatment, the agency may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.

Only the time actually taken as leave may be counted toward the leave entitlement.

Example: An employee normally works 40 hours each week. The employee is on a reduced work schedule of 20 hours per week. The FMLA leave may continue for up to 24 calendar weeks.

If an employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule to bring the number of hours worked up to the regular schedule, the agency shall submit a personnel action form showing a change in the number of hours the employee is scheduled to work. This will result in an employee earning pay and leave at a reduced rate. The agency remains responsible for paying the employee's medical premium.

Family and Medical Leave Policy (cont.)

§ 8. Agency Responsibilities

§ 8.1. Notification of FMLA Provisions

Each agency is required to post and keep posted in conspicuous places a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice shall be posted prominently where it can be readily seen by employees and applicants for employment.

In addition to posting the FMLA provisions, handbooks and other written materials shall include the general notice information. Where such materials do not exist, the agency shall provide the general notice to new employees upon being hired, rather than requiring that it be distributed to all employees annually.

Agencies are permitted to distribute the handbook or general notice to new employees through electronic means so long as all of the information is accessible to all employees, that it is made available to employees not literate in English (if required), and that the information provided includes, at a minimum, all of the information contained in the general notice.

Agencies may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the U. S. Department of Labor, Wage and Hour Division.

§ 8.2. Notice of Eligibility

When an employee requests FMLA leave, or when the agency knows that an employee's leave may be for an FMLA-qualifying reason, the employee shall be notified of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. Employee eligibility is determined (and notice shall be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

If the employee is not eligible for FMLA leave, the notice shall state at least one reason why the employee is not eligible. Notification of eligibility may be oral or in writing.

If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If,

Family and Medical Leave Policy (cont.)

however, the employee's eligibility status has changed the agency shall notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

The agency shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the employee each time the eligibility notice is provided. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice shall include, as appropriate:

1. that the leave may be designated and counted against the employee's annual FMLA leave entitlement;
2. requirements for the employee to furnish certifications;
3. the employee's right to substitute paid leave;
4. requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments;
5. the employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial;
6. the employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and
7. the employee's potential liability for payment of health insurance premiums paid by the agency during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

§ 8.3. Designation of Leave as FMLA Leave

It is the responsibility of the agency to:

1. determine that leave requested is for a FMLA qualifying reason, and
2. designate leave, whether paid or unpaid, as FMLA leave even when an employee would rather not use any of the FMLA entitlement.

The agency shall give notice of the designation to the employee within five business days absent extenuating circumstances. The notice may be oral or in writing, but shall be confirmed in writing no later than the following payday.

Family and Medical Leave Policy (cont.)

If the agency determines that the leave will not be designated as FMLA-qualifying (e.g., if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the agency shall notify the employee of that determination.

For military caregiver leave that also qualifies as leave taken to care for a family member with a serious health condition, the agency shall designate such leave as military caregiver leave first. The leave cannot be counted against both an employee's entitlement of 26 workweeks of military caregiver leave and 12 workweeks of leave for other qualifying reasons.

The key in designating FMLA leave is the qualifying reason(s), not the employee's election or reluctance to use FMLA leave or to use all, some or none of the accrued leave. The agency's designation shall be based on information obtained from the employee or an employee's representative (e.g., spouse, parent, physician, etc.).

If the agency will require the employee to present a fitness-for-duty certification to be restored to employment, the agency shall provide notice of such requirement with the designation notice. If the agency will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the agency shall so indicate in the designation notice, and shall include a list of the essential functions of the employee's position.

The agency shall notify the employee of the amount of leave counted against the employee's FMLA leave entitlement.

The agency may retroactively designate leave as FMLA leave with appropriate notice to the employee provided that the agency's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, the agency and employee can mutually agree that leave be retroactively designated as FMLA leave.

§ 8.4. Designation of Paid Leave as FMLA Leave

When an employee is on paid leave but has not given notice of the need for FMLA leave, the agency shall, after a period of 10 workdays, request that the employee provide sufficient information to establish whether the leave is for a FMLA-qualifying reason. This does not preclude the agency from requesting the information sooner, or at any time an extension is requested.

Family and Medical Leave Policy (cont.)

If an absence which begins as other than FMLA leave later develops into an FMLA qualifying absence, the entire portion of the leave period that qualifies under FMLA may be counted as FMLA leave.

§ 8.5. Designation of FMLA Leave after Return to Work

The agency may not designate leave that has already been taken as FMLA leave after the employee returns to work, with two exceptions:

1. if an employee is out for a reason that qualifies for FMLA leave and the agency does not learn of the reason for the leave until the employee returns to work, the agency may designate the leave as FMLA leave within two business days of the employee's return; or
2. if the agency has provisionally designated the leave under FMLA leave and is awaiting receipt from the employee of documentation.

Similarly, the employee is not entitled to the protection of the FMLA if the employee gives notice of the reason for the leave later than two days after returning to work.

§ 9. Employee Responsibilities

§ 9.1. Notice

The employee shall give notice to the supervisor of the intention to take leave under this policy unless the leave is a medical emergency. The notice shall follow the agency's usual and customary call-in procedures for reporting an absence. The employee shall explain the reasons for the needed leave in order to allow the agency to determine that the leave qualifies under the Act.

If the reason for leave is foreseeable and is:	**the employee shall:**
For Birth/Adoption/Foster Care	give the agency not less than a 30-day notice, in writing. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is

Family and Medical Leave Policy (cont.)

	practicable, which means within one or two business days of when the need for leave becomes known to the employee.
For Planned Medical Treatment	(1) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations and (2) give not less than a 30-day notice. If the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.
Due to Active Duty of Family Member	See FML-Qualifying Exigency policy.

If the employee will not return to work after the period of leave, the agency shall be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

Certification Requirements for Family and Medical Leave

§ 9.2. Certification

The employee shall provide certification in accordance with the provisions listed below. If the employee does not provide medical certification, any leave taken is not protected by FMLA.

The agency should request medical certification within five business days after the employee provides notice of the need for FMLA leave.

The employee shall provide a copy of the health care provider’s certification within the time frame requested by the agency (which shall be at least 15 calendar days) unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Family and Medical Leave Policy (cont.)

§ 9.3. Certification Requirements

Certification shall be sufficient if it states the following:

1. the date on which the serious health condition commenced;
2. the probable duration of the condition;
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition;
4. when caring for a child, spouse or parent, a statement that the employee is needed and an estimate of the amount of time that such employee is needed;
5. when for the employee's illness, a statement that the employee is unable to perform the functions of the position;
6. when for intermittent leave, or leave on a reduced work schedule, for planned medical treatment, the dates on which treatment is expected and the duration;
7. when for intermittent leave, or leave on a reduced work schedule for the employee's illness, a statement of the medical necessity for the arrangement and the expected duration; and
8. when for intermittent leave, or leave on a reduced work schedule, to care for a child, parent or spouse, a statement that the arrangement is necessary or will assist in their recovery and the expected duration.

Medical Certification Form - Form WH-380, developed by the U.S. Department of Labor as an optional form for use in obtaining medical certification, including second and third opinions, may be used. Another form containing the same basic information may be used; however, no information in addition to that requested on Form WH-380 may be required.

§ 9.4. Validity of Certification

If an employee submits a complete certification signed by the health care provider, the agency may not request additional information; however, a health care provider, human resource professional, a leave administrator, or a management official representing the agency may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification. In no case, may the employee's direct supervisor contact the employee's health care provider.

Family and Medical Leave Policy (cont.)

If an agency deems a medical certification to be incomplete or insufficient, the agency shall specify in writing what information is lacking, and give the employee seven calendar days to cure the deficiency.

Second Opinion - An agency that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion with the following conditions:

1. the agency bears the expenses, including reasonable “out of pocket” travel expenses;
2. the agency may not require the employee or family member to travel outside normal commuting distance except in very unusual circumstance;
3. pending receipt of the second (or third) opinion, the employee is provisionally entitled to FLMA leave;
4. if the certifications do not ultimately establish the employee’s entitlement to FMLA leave, the leave shall not be designated as FMLA leave; and
5. the agency is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the agency unless the agency is located in an area where access to health care is extremely limited.

Third Opinion - If the opinions of the employee’s and the agency’s designated health care providers differ, the agency may require the employee to obtain certification from a third health care provider, again at the agency’s expense. This third opinion shall be final and binding. The third health care provider shall be designated or approved jointly by the agency and the employee.

The agency is required to provide the employee, within two business days, with a copy of the second and third medical opinions, where applicable, upon request by the employee.

§ 9.5. Recertification of Medical Conditions

An agency may request recertification no more often than every 30 days unless:

1. an extension is requested,
2. circumstances described by the previous certification have changed significantly, or
3. the agency receives information that casts doubt upon the employee’s stated reason for the absence.

Family and Medical Leave Policy (cont.)

If the minimum duration specified on a certification is more than 30 days, the agency may not request recertification until that minimum duration has passed unless one of the conditions above is met When the duration of a condition is described as “lifetime” or “unknown,” the agency may request recertification of an ongoing condition every six months in conjunction with an absence.

The employee shall provide the requested recertification to the agency within the time frame requested by the agency (which shall allow at least 15 calendar days after the agency’s request), unless it is not practicable under the particular circumstances.

Any recertification requested by the agency shall be at the employee’s expense unless the agency provides otherwise. No second or third opinion on recertification may be required.

§ 9.6. Intent to Return to Work

An agency may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The agency's policy regarding such reports may not be discriminatory and shall take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

If an employee gives unequivocal notice of intent not to return to work, the agency's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the agency may require that the employee provide the agency reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The agency may also obtain information on such changed circumstances through requested status reports.

Family and Medical Leave Policy (cont.)

§ 9.7. Fitness for Duty Certification

Agencies may enforce uniformly-applied policies or practices that require all similarly situated employees who take leave to provide a certification that they are able to resume work. An agency may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. Where reasonable job safety concerns exist, an agency may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

§ 10. Employment and Benefits Protections

§ 10.1. Reinstatement

The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The agency may require the employee to report at reasonable intervals to the agency on the employee's status and intention to return to work. The agency may require that the employee provide certification that the employee is able to return to work.

Reinstatement is not required if an employee is reduced in force during the course of taking FMLA leave. The agency has the burden of proving that the reduction would have occurred had the employee not been on FMLA leave.

§ 10.2. Benefits

The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.

§ 10.3. Health Benefits

The State shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any share of health plan premiums which an employee had paid prior to leave shall continue to be paid by the employee during the leave period. The agency shall give advance written notice to

Family and Medical Leave Policy (cont.)

employees of the terms for payment of premiums during FMLA leave. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late.

The agency shall provide 15 days' notice that coverage will cease.

Effect of Failure to Pay Premiums - If the employee's failure to make the premium payments leads to a lapse in coverage, the agency shall still restore the employee, upon return to work, to the health coverage equivalent to that which the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting period or preexisting conditions.

Reinstatement of Health Insurance Coverage - Even if the employee chooses not to maintain group health plan coverage for dependents or if coverage lapses during FMLA leave, the employee is entitled to be reinstated on the same terms as prior to taking leave, including family or dependent coverage, without any qualifying period, physical examination, exclusion of pre-existing condition, etc. Therefore, the agency should assure that health benefits coverage will be reinstated; otherwise, the agency would need to pay the premium and recover it after the employee returns to work.

Recovery of Premiums - The agency may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control. For this purpose, return to work is defined as 30 calendar days; therefore, if the employee resigns any time within 30 days after the return to work, the insurance premium may be recovered unless the reason for the resignation is related to the continuation, recurrence, or onset of a series health condition or other circumstances beyond the employee's control.

Family and Medical Leave Policy (cont.)

§ 11. Interference with Rights

§ 11.1. Actions Prohibited

It is unlawful to interfere with, restrain, or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this policy.

§ 11.2. Protected Activity

It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:

1. files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this policy;
2. gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this policy; or
3. testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this policy.

§ 12. Enforcement

§ 12.1. Violations

Denial of leave requested pursuant to the Family and Medical Leave Act is a grievable issue and employees, except for ones in exempt positions (policymaking, exempt managerial, confidential assistants, confidential secretaries and chief deputy or chief administrative assistant), may appeal under the State Personnel Act.

Violations can result in any of the following or a combination of any of the following and are enforced by the U. S. Secretary of Labor:

1. U.S. Department of Labor investigation,
2. Civil liability with the imposition of court cost and attorney’s fees, or
3. Administrative action by the U. S. Department of Labor.

Family and Medical Leave Policy (cont.)

§ 13. Posting and Recordingkeeping Requirements

§ 13.1. Posting

Agencies are required to post and keep posted, in a conspicuous place, a notice explaining the FMLA provisions and providing information concerning the procedures for filing complaints of violations of the Act with the U. S. Department of Labor, Wage and

Hour Division. Copies of the required notice may be obtained from local offices of the Wage and Hour Division.

§ 13.2. Records

Agencies are required to keep records for no less than three years and make them available to the Department of Labor upon request.

In addition to the records required by the Fair Labor Standards Act, the agency shall keep records of:

1. dates FMLA leave is taken;
2. hours of leave if less than a full day;
3. copies of employee notices;
4. documents describing employee benefits;
5. premium payments of employee benefits; and
6. records of any disputes.

Records and documents relating to medical certifications, recertification or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except that:

1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.
2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.
3. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

Family and Medical Leave Policy (cont.)

§ 14. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1400

§ 15. History of This Policy

Date	Version
August 2, 1993	• New policy on Family and Medical Leave.
December 1, 1993	• Serious Health Condition additions and clarifications: • Added any period of incapacity requiring absence from work of more than three workdays that also involves continuing treatment by a health care provider. • Added continuing treatment by a health care provider for conditions so serious that, if not treated would likely result in an absence of more than three workdays. • Prenatal care is also included. The period of actual physical disability associated with childbirth is considered a serious health condition and must be taken as family/medical leave, whether as paid or unpaid leave. • Reduced Work Schedule and Intermittent Work Schedule: Defined. • 12-Month Period: Redefined. (Originally the 12 month period was computed by counting back 12 months from the date the leave began.) • Eligible Employee: Defined functions as “essential” functions of the job employee is unable to perform in position. • Clarified that regulations on temporary employees also apply to any other type of appointment that is not permanent, including intermittent, if the employee worked at least 1250 hours during the previous 12-Month Period.

Family and Medical Leave Policy (cont.)

	• Leave Charges: Clarified that it is the responsibility of the agency to designate leave paid or unpaid, as FMLA leave, based on information provided by the employee. Added that if an employee on paid leave has not provided sufficient information, agency is required to make a determination after a period of 10 workdays. Information may be requested sooner. Leave not designated by employer cannot be counted against the employee's entitlement. • Intermittent Leave or Reduced Work Schedule: Added that there is no minimum limitation on the amount of leave taken intermittently. That only time taken as leave counts toward 12 weeks. Identified when Form PD-105 needed. • Employee Responsibility: Clarified that the employee must explain reasons for the need of leave so as to allow agency to make a determination that the leave qualifies under the Act. Added medical emergency – written advance notice cannot be required. • Health Benefits: Clarified that employee must pay health plan premium paid prior (such as family coverage) to leave period. If insurance lapse, employer must still restore the equivalent coverage. • Posting Requirement and Notice Provisions: new • Added to the definition of spouse – wife or husband recognized by the State of North Carolina.

Family and Medical Leave-Military Caregiver Policy

Contents:

§ 1. Purpose

The Family and Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job-protected leave to care for a family member who is a current service member or a covered veteran with a serious injury or illness. FMLA leave for this purpose is called "military caregiver leave."

§ 2. Military Caregiver Entitlement

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember or a covered veteran with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to provide care for the servicemember or veteran.

§ 3. Definitions

Covered Service member: The term "covered servicemember" means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

Covered Veteran: A veteran is covered if he or she was a member of the Armed Forces (including a member of the National Guard or Reserves); was discharged or released under conditions other than dishonorable; and was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards

Family and Medical Leave-Military Caregiver Policy (cont.)

the determination of the five-year period. For example, if a servicemember retired on October 28, 2007, he or she would have had three years remaining of the five-year period on October 28, 2009. The family member requesting FMLA leave will have three years to begin military caregiver leave starting on March 8, 2013. Likewise, if a service member was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.

Outpatient Status: The term "outpatient status" means, with respect to a covered servicemember who is a currently member of the Armed forces, the status of member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Serious Injury or Illness of a Covered Service Member: The term "serious injury or illness" related to military caregiver leave is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty.

Serious Injury or Illness of a Covered Veteran: The term "serious injury or illness" means an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is either:

1. A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
2. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; or
3. A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
4. An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Family and Medical Leave-Military Caregiver Policy (cont.)

Any one of these definitions meets the FMLA's definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

Next of Kin: The term "next of kin" for a current servicemember or covered veteran is the nearest blood relative, other than the current servicemember's or veteran's spouse, parent, son, or daughter, in the following order of priority:

1. a blood relative who has been designated in writing by the servicemember or veteran as the next of kin for FMLA purposes;
2. blood relative who has been granted legal custody of the servicemember or veteran;
3. brothers and sisters;
4. grandparents;
5. aunts and uncles; and
6. first cousins.

Note: When a servicemember or veteran designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the servicemember's or veteran's only FMLA next of kin. When a current servicemember or veteran has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the servicemember or veteran, all such family members are considered the servicemember's or veteran's next of kin and may take FMLA leave to provide care to the servicemember or veteran.

§ 4. Employee Eligibility

An employee's eligibility for military caregiver leave shall be determined using the same requirements (appointment type, months of cumulative service and hours in pay status) as used for regular Family Medical Leave.

§ 5. Military Caregiver Benefits and Options

Employees on military caregiver leave receive up to 26 workweeks of paid or unpaid leave during any single 12-month period; health insurance coverage, and reinstatement rights.

Family and Medical Leave-Military Caregiver Policy (cont.)

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12month period established for other FMLA (regular and qualifying exigency) leave reasons.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember or covered veteran during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember or covered veteran is forfeited. Military caregiver leave is available to an eligible employee once per servicemember/veteran, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same servicemember/veteran if he or she has another serious injury or illness. For example, if an eligible employee takes military caregiver leave to care for a current servicemember/veteran who sustained severe burns, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember/veteran is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one current servicemember/veteran with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current servicemember and when the family member is a veteran. An employee may choose to exhaust available sick leave and/or vacation/bonus leave, or any portion, or go on leave without pay to care for an injured family member.

Leave may be taken intermittently or on a reduced work schedule.

Family and Medical Leave-Military Caregiver Policy (cont.)

§ 6. Employee Notification Requirements

Employees shall follow the same notification requirements for requesting military caregiver leave as required under the regular Family and Medical Leave policy. The employee must follow the agency's usual and customary policy for requesting a leave of absence including call-in procedures for reporting unexpected absences. The employee shall provide such notice when the need for leave becomes known to the employee.

§ 7. Notice and Designation of Eligibility

The agency shall follow the same process for notification of eligibility and designation of military caregiver leave as required for regular Family Medical Leave.

§ 8. Certification Requirements for Military Caregiver Leave

For Covered Servicemembers - An agency may require that leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

Employees may use the U. S. Department of Labor's optional form WH-385.

For Covered Veterans – An agency may require that leave to care for a veteran be supported by a certification completed by an authorized health care provider. An employee may submit a copy of a VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family.

Caregivers to certify that the veteran has a serious injury or illness. This documentation is sufficient regardless of whether the employee is the named caregiver. However, if the employee submits such documents, the employee may still be required to provide confirmation of family relationship and documentation of discharge date and status for a complete certification. Employees may use the U. S. Department of Labor's optional form WH-385-V.

An authorized health care provider is a:

(1) United States Department of Defense ("DOD") health care provider;

(2) United States Department of Veterans Affairs ("VA") health care provider;

(3) DOD TRICARE network authorized private health care provider;

Family and Medical Leave-Military Caregiver Policy (cont.)

(4) (4) DOD non-network TRICARE authorized private health care provider; or

(5) non-military-affiliated health care provider.

An employer may request a second and third opinion of a covered veteran's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. An agency may request a second or third opinion of a current servicemember's/veteran's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. An agency may seek authentication and/or clarification of the certification received from a military-affiliated health care provider. Additionally, recertifications are not permitted for leave to care for a covered servicemember/veteran.

The Department of Labor has developed optional forms (WH-385/WH-385-V) for employees' use in obtaining certification that meets FMLA's certification requirements. These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember/veteran with a serious injury or illness. WH-385/WH-385-V, or another form containing the same basic information, may be used by the agency; however, no information may be required beyond that specified in this form. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists.

§ 9. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1400

§ 10. History of This Policy

Date	Version
March 8, 2013	• First version – Split out along with Qualifying Exigency from the original Family and Medical Leave Policy. See Family and Medical Leave Policy History (add link) at March 8, 2013.

Family and Medical Leave-Qualifying Exigency Policy

Contents:

§ 1. Purpose

The Family and Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job-protected leave to care for a family member who is a current servicemember or a covered veteran with a serious injury or illness. FMLA leave for this purpose is called "military caregiver leave."

§ 2. Military Caregiver Entitlement

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember or a covered veteran with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to provide care for the servicemember or veteran.

§ 3. Definitions

Covered Service member: The term "covered servicemember" means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

Covered Veteran: A veteran is covered if he or she was a member of the Armed Forces (including a member of the National Guard or Reserves); was discharged or released under conditions other than dishonorable; and was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards

Family and Medical Leave-Qualifying Exigency Policy (cont.)

the determination of the five-year period. For example, if a servicemember retired on October 28, 2007, he or she would have had three years remaining of the five-year period on October 28, 2009. The family member requesting FMLA leave will have three years to begin military caregiver leave starting on March 8, 2013. Likewise, if a servicemember was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.

Outpatient Status: The term "outpatient status" means, with respect to a covered servicemember who is a currently member of the Armed forces, the status of member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Serious Injury or Illness of a Covered Service Member: The term "serious injury or illness" related to military caregiver leave is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty.

Serious Injury or Illness of a Covered Veteran: The term "serious injury or illness" means an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is either:

1. a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
2. a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition; or
3. a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
4. an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Family and Medical Leave-Qualifying Exigency Policy (cont.)

Any one of these definitions meets the FMLA's definition of a serious injury or illness for a covered veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

Next of Kin: The term "next of kin" for a current servicemember or covered veteran is the nearest blood relative, other than the current servicemember's or veteran's spouse, parent, son, or daughter, in the following order of priority:

1. a blood relative who has been designated in writing by the servicemember or veteran as the next of kin for FMLA purposes
2. blood relative who has been granted legal custody of the servicemember or veteran
3. brothers and sisters
4. grandparents
5. aunts and uncles
6. first cousins

Note: When a servicemember or veteran designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the servicemember's or veteran's only FMLA next of kin. When a current servicemember or veteran has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the servicemember or veteran, all such family members are considered the servicemember's or veteran's next of kin and may take FMLA leave to provide care to the servicemember or veteran.

§ 4. Employee Eligibility

An employee's eligibility for military caregiver leave shall be determined using the same requirements (appointment type, months of cumulative service and hours in pay status) as used for regular Family Medical Leave.

§ 5. Military Caregiver Benefits and Options

Employees on military caregiver leave receive up to 26 workweeks of paid or unpaid leave during any single 12-month period; health insurance coverage, and reinstatement rights.

Family and Medical Leave-Qualifying Exigency Policy (cont.)

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12month period established for other FMLA (regular and qualifying exigency) leave reasons.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember or covered veteran during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember or covered veteran is forfeited. Military caregiver leave is available to an eligible employee once per servicemember/veteran, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same servicemember/veteran if he or she has another serious injury or illness. For example, if an eligible employee takes military caregiver leave to care for a current servicemember/veteran who sustained severe burns, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember/veteran is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one current servicemember/veteran with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current servicemember and when the family member is a veteran. An employee may choose to exhaust available sick leave and/or vacation/bonus leave, or any portion, or go on leave without pay to care for an injured family member.

Leave may be taken intermittently or on a reduced work schedule.

Family and Medical Leave-Qualifying Exigency Policy (cont.)

§ 6. Employee Notification Requirements

Employees shall follow the same notification requirements for requesting military caregiver leave as required under the regular Family and Medical Leave policy. The employee must follow the agency's usual and customary policy for requesting a leave of absence including call-in procedures for reporting unexpected absences. The employee shall provide such notice when the need for leave becomes known to the employee.

§ 7. Notice and Designation of Eligibility

The agency shall follow the same process for notification of eligibility and designation of military caregiver leave as required for regular Family Medical Leave.

§ 8. Requirements for Military Caregiver Leave

For Covered Servicemembers - An agency may require that leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

Employees may use the U. S. Department of Labor's optional form WH-385.

For Covered– An agency may require that leave to care for a veteran be supported by a certification completed b Veterans y an authorized health care provider. An employee may submit a copy of a VASRD rating determination or enrollment documentation from the VA Program of Comprehensive Assistance for Family

Caregivers to certify that the veteran has a serious injury or illness. This documentation is sufficient regardless of whether the employee is the named caregiver. However, if the employee submits such documents, the employee may still be required to provide confirmation of family relationship and documentation of discharge date and status for a complete certification. Employees may use the U. S. Department of Labor's optional form WH-385-V.

An authorized health care provider is a:

(1) United States Department of Defense ("DOD") health care provider;
(2) United States Department of Veterans Affairs ("VA") health care provider;
(3) DOD TRICARE network authorized private health care provider;

Family and Medical Leave-Qualifying Exigency Policy (cont.)

(4) (4) DOD non-network TRICARE authorized private health care provider; or

(5) non-military-affiliated health care provider.

An employer may request a second and third opinion of a covered veteran's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. An agency may request a second or third opinion of a current servicemember's/veteran's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. An agency may seek authentication and/or clarification of the certification received from a military-affiliated health care provider. Additionally, recertifications are not permitted for leave to care for a covered servicemember/veteran.

The Department of Labor has developed optional forms (WH-385/WH-385-V) for employees' use in obtaining certification that meets FMLA's certification requirements. These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember/veteran with a serious injury or illness. WH-385/WH-385-V, or another form containing the same basic information, may be used by the agency; however, no information may be required beyond that specified in this form. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists.

§ 9. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1400

§ 10. History of This Policy

Date	Version

Family and Medical Leave-Qualifying Exigency Policy (cont.)

March 8, 2013	• First version – Split out along with Qualifying Exigency from the original Family and Medical Leave Policy. See Family and Medical Leave Policy History (add link) at March 8, 2013.

Family Illness Leave Policy

Contents:

§ 1. Purpose

Family Illness Leave is provided for an employee to care for the employee's child, parent or spouse where that child, spouse or parent has a serious health condition. It is not provided for the employee's illness.

The Family Illness Leave provides a limited extension of the benefits beyond the 12 weeks provided under the Family and Medical Leave Policy. Family Illness Leave does not run concurrently with Family Medical Leave. Eligibility for Family Illness Leave begins only after the Family Medical Leave benefit is fully exhausted.

An employee may not waive his/her Family and Medical Leave benefit by instead choosing to go on Family Illness Leave.

§ 2. Definitions

See the Family and Medical Leave Policy(add link) for definitions of child, parent, spouse, and serious health condition

§ 3. Covered Employees and Eligibility

An employee's eligibility for Family Illness Leave shall be made based on the employee's months of service and hours of work as of the date leave is to commence.

Family Illness Policy (cont.)

An employee is eligible if the employee has:

- a full-time or part-time (half-time or more) permanent, probationary, or time-limited appointment,
- 12 moths total service with the State, and
- been in pay status at least 1040 hours during the previous 12 months.

Temporary employees and part-time employees that are less than half-time are not eligible for Family Illness Leave.

§ 4. Amount of Leave

An eligible employee (full-time or part-time) is entitled to up to 52 weeks of leave without pay during a 5-year period to care for the employee's seriously ill child, spouse, or parent. Although this leave is without pay, an employee may elect to cover some or all of the period of leave taken under this policy by using vacation, bonus, sick or voluntary shared leave. Leave earned under the Compensatory Time Off policy may also be used.

Example: An employee may take 24 weeks of leave beginning on January 1, 2003. The employee would then be eligible for the balance, 28 weeks, up until January 1, 2008. Then, a new 5-year period would begin when the employee commences another leave without pay for this purpose.

§ 5. Intermittent Leave or Reduced Work Schedule

Family Illness Leave may be taken all at one time or intermittently.

Note: If the employee is in non-pay status more than 1,040 (26 weeks) hours through use of Family Illness Leave or otherwise, the employee would not qualify for Family and Medical Leave the following year since the required 1,040 hours in pay status within the previous year would not be met.

If taken intermittently, it must be in units of one hour or more.

If taken intermittently or on a reduced work schedule, any portion of a week will equal one week of Family Illness Leave.

Family Illness Policy (cont.)

§ 6. What counts toward the 52 weeks leave?

All periods of leave, with or without pay, used for Family Illness Leave count towards the 52 workweeks to which the employee is entitled. This includes leave taken under the Voluntary Shared Leave Policy.

§ 7. Health Insurance

While on unpaid Family Illness Leave the employee may continue coverage under the State's health insurance program by paying the full premium cost (no contribution by the State).

If using Family and Medical Leave, employee's premiums will be paid by the State.

§ 8. Agency Responsibility

It is the agency's responsibility to determine whether an employee qualifies for this leave. The same certification/recertification requirements may be applied that apply to the Family and Medical Leave.

§ 9. Employee Responsibility The employee shall:

- apply in writing to the supervisor for leave,
- provide certification or recertification required by the agency,
- give written notice of intention to return to work at least thirty days prior to the end of the leave, and
- return to duty within or at the end of the time granted, or
- notify the agency immediately when there is a decision not to return.

Failure to provide certification or recertification required by the agency may result in dismissal for unacceptable personal conduct or separation due to continued unavailability for work.

If the employee does not give notice of the intention to return, the agency is not required to provide reinstatement but may do so at its discretion. Failure to report at the expiration of a leave, unless an extension has been requested and approved, may be considered as a resignation.

Family Illness Policy (cont.)

§ 10. Reinstatement

Reinstatement to the same position or one of like status and pay must be made upon the employee's return to work unless other arrangements are agreed to in writing in advance of the employee's return to work.

§ 11. Accounting for Leave

Family Illness Leave shall be accounted for separate from Family and Medical Leave or any other type of leave without pay.

Advisory Note: It is important that agencies maintain records of this leave so that it can be ascertained readily whether an employee is eligible.

§ 12. Transfer

When an employee transfers to another agency, the releasing agency shall record on the personnel action the date and amount of Family Illness Leave first taken.

§ 13. Grievance

Denial of leave requested is a grievable issue and employees, except for ones in exempt positions, (policymaking, exempt managerial, confidential assistants, confidential secretaries and chief deputy or chief administrative assistant) may appeal under the State Human Resources Act.

§ 14. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5); S.L. 2002-126, s. 28.3B

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1412

Family Illness Policy (cont.)

§ 15. History of This Policy

Date	Version
September 30, 2002	• New policy to implement the provisions of 2001 session held in 2002, SB1115, Section 28.3B, Additional Family and Medical Leave. (Permanent rule eff 12-1-03.)
August 1, 2003	• Intermittent Leave/Reduced Schedule changed to clarify that any portion of a week taken will count as a full week.
February 1, 2004	• 1) Remove advisory note. The rule became a permanent rule effective December 1, 2003. • 2) Clarify who is eligible to grieve denial of leave.
January 1, 2012	• To ensure compliance with the federal Family Medical Leave Act [825.22(d)] the policy was changed to require the Family Medical Leave benefit be fully exhausted before eligibility for Family Illness begins. Intermittent Family Illness Leave can no longer run concurrently with intermittent Family Medical Leave.
September 7, 2017	• Policy revised to delete all references to trainee appointments, per appointment types and career status.

Federal Hatch Political Activities Act (As amended by the Hatch Act Modernization Act of 2012)

The following pages set out the text of the chapter of the United States Code commonly referred to as the "Hatch Act," 5 U.S.C. §§ 1501 to 1508. The Hatch Act was substantially amended by the Hatch Act Modernization Act of 2012, Public Law 112-230, 126 Stat. 1616 (Dec. 28, 2012). The text below shows the Hatch Act as of September 2021, including the amendments made in 2012. For a summary of the Hatch Act, please see the Limitation of Political Activity Policy.

§ 1501. Definitions

For the purpose of this chapter [*5 USCS §§ 1501* et seq.]—

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof, or the executive branch of the District of Columbia, or an agency or department thereof;

(3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by—

(i) a State or political subdivision thereof;

(ii) the District of Columbia; or

(iii) a recognized religious, philanthropic, or cultural organization.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

Federal Hatch Political Activities Act (cont.)

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency, be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State, municipality, or the District of Columbia who is not classified under a State, municipal, or the District of Columbia merit or civil-service system; or

(4) an individual holding elective office.

§ 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title [*5 USCS § 1502(a)(3)*] does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title [*5 USCS § 1502*], it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

(1) fix a time and place for a hearing; and

Federal Hatch Political Activities Act (cont.)

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title [*5 USCS § 1504*], and be heard. After this hearing, the Merit Systems Protection Board shall—

(1) determine whether a violation of section 1502 of this title [*5 USCS § 1502*] has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title [*5 USCS § 1502*] and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State (or in the case of the District of Columbia, in the District of Columbia) in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

Federal Hatch Political Activities Act (cont.)

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title [*5 USCS § 1508*], a determination or order of that Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

§ 1507. Subpenas* and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter [*5 USCS §§ 1501* et seq.]. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence of so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter [*5 USCS §§ 1501* et seq.]. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any

* [Editor's note: The older spelling "subpena" rather than "subpoena" is used throughout the statute.]

Federal Hatch Political Activities Act (cont.)

person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title [*5 USCS § 1504*, *1505*, or *1506*] may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court

Federal Hatch Political Activities Act (cont.)

determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

History of This Portion of the State Human Resources Manual

Date	Version
1939	Act adopted by Federal Statute.
July 1, 2014	Amended to reflect changes enacted by Congress through the passage of the Hatch Act Modernization Act of 2012. New law specifically states that only employees who are 100% federally funded are prohibited from running for a partisan office. In addition: • Added a definition for “partisan political office.” • Clarified employees cannot use federal, State or other public funds to support a candidacy. • Clarified that employees cannot use State resources to support a candidacy. • Corrected references to old federal codes. • Added a section for Leave of Absences.
December 2, 2021	Revised this document to set out the text of the Hatch Act, rather than a summary of the act based on interpretation. For a summary of the Hatch Act, please see the Limitation of Political Activity Policy.

Final Administrative Grievance Review by State Human Resources Commission Policy

Contents:

§ 1. Requirements for a Hearing

The State Human Resources Act requires that certain conditions be met before a hearing can be held on an employee's grievance. These conditions are:

1. The employee must be either a permanent competitive service employee or be a career employee under the requirements of the State Human Resources Act or an applicant, where applicable (for more information on this, see Employee Appeals and Grievances in this Section).
2. The grievant must either have completed the agency grievance procedure; allege an issue that is appealable directly to the State Human Resources Commission; or, for an unlawful workplace harassment grievance, the employee must have submitted a written complaint to the agency and waited 60 days for the agency to take appropriate action; or, for a grievance arising under G.S. 126-14.2, the employee must have received a determination letter from the Office of Administrative Hearings, Civil Rights Division finding probable cause to believe that a violation of G.S. 14.2 has occurred.
3. The request for hearing, in the form of a petition for a contested case hearing, must be filed no more than thirty (30) calendar days after the grievant has received the final agency decision on the matter; or, if the grievant is alleging unlawful workplace harassment, the grievance, in the form of a petition for contested case hearing, must be filed no later than thirty (30) days after the sixty (60) day waiting period has ended. If the grievant is alleging an issue which is appealable directly to the Commission, the grievance, in the form of a petition for a contested case hearing, must be filed no more than thirty calendar days of notice of the alleged act. If the grievant is alleging a violation of G.S. 126-14.2, the grievance must be filed, in the form of a petition for a contested case hearing, within 15 days of the initial determination by the Civil Rights Division of the

Final Administrative Grievance Review by State Human Resources Commission Policy (cont.)

Office of Administrative Hearings that probable cause to believe that a violation of G.S. 126-14.2 has occurred.

4. The grievance must concern issues that are appealable as cited in G.S. 126-34.1.

The above conditions are established by law and cannot be waived by either party.

§ 2. Request for Hearing

In order to obtain a hearing, the applicant or employee must request that his or her grievance be heard. Employee or applicant requests for a hearing, in the form of a petition for a contested case hearing, should be directed to the Office of Administrative Hearings and the petition should also be served on the agency's Registered Agent for service of process on file at the Office of the Attorney General.

Advisory Note: The current address for the Office of Administrative Hearings is: Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. The street address for OAH is: 1711 New Hope Church Road, Raleigh N.C. 27609. The telephone number is: (984) 236-1850. The current telephone number for obtaining the name of an agency's Registered Agent at the Office of the Attorney General is (919) 716-6415. The address for the Office of the Attorney General is: N.C. Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001.

Advisory Note: Hearings on grievances appealed to the State Human Resources Commission are conducted by an administrative law judge assigned by the Office of Administrative Hearings. Requests for information on hearing procedures should be directed to: Chief Hearing Clerk, Hearings Division, Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

§ 3. Post Hearing Matters

After the hearing, the administrative law judge will make a recommended decision containing findings of fact, conclusions of law and a proposed order. This will be sent to both parties; the administrative law judge will also send it to the State Human Resources Commission, along with a complete record in the matter.

Final Administrative Grievance Review by State Human Resources Commission Policy (cont.)

§ 4. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-14.2;

It is compliant with the Administrative Code rules at:

- 25 NCAC 01J .1300

§ 5. History of This Policy

Date	Version
	• First version.
June 11, 2011	• On June 25, 2011, Senate Bill 781 (Session Law 2011-398) was passed into law which took away the ability of the State Human Resources Commission (SHRC) to hear and render decisions in contested employee grievance cases. Prior to the ratification of this bill, the SHRC had the following duties: Conduct hearings regarding contested cases, Review the Administrative Law Judge's decision regarding contested cases, modify or accept the Administrative Law Judge's decision regarding a contested case, and render their own decision regarding contested cases.

Flexible Benefits Policy

Contents:

§ 1. NCFlex

The NCFlex Program began in 1996, offering voluntary benefits, to eligible employees, on a pre-tax basis through payroll deduction. Electing benefits under this Program allows for employees to reduce their taxable income.

§ 2. Eligibility

To be eligible to participate in the NCFlex Program, an employee must work 20 or more hours per week in a permanent, probationary, trainee, or time-limited position and must work at a state agency, university or a participating community college.

§ 3. Enrollment Processing

An employee may enroll online through the BEACON system or through the NCFlex online system, depending on the work location. The Personnel Office will be able to advise which system is available for use at a specific work location along with the web address.

Flexible Benefits Policy

§ 4. NCFlex offers the following benefits under payroll deduction:

§ 4.1. Health Care Flexible Spending Account (HCFSA)

An employee may enroll in the HCFSA for health care expenses by contributing a dollar amount through payroll deduction. The contribution is taken out of the pay before taxes and may be used for various out-of-pocket health expenses (i.e., copayments and prescription medicine to braces and contact lenses, etc.).

§ 4.2. Dependent Care Flexible Spending Account (DCFSA)

An employee may enroll in the DCFSA for dependent care expenses by contributing a dollar amount through payroll deduction. The contribution is taken out of the pay before taxes and may be used for care of a dependent child under age 13, an incapacitated spouse and/or a dependent adult. Expenses include but are not limited to: school care, home care and housekeeping services.

§ 4.3. Dental Plan

Two plans are available under this Program, High Option and Low Option. The High Option pays a higher percentage of benefits and covers preventive, basic, major and orthodontic services. The Low Option pays a lower percentage of benefits and covers preventive and basic services.

§ 4.4. Core Accidental Death and Dismemberment (AD&D) Insurance

This benefit provides $10,000 Core AD&D coverage at no cost to the employee. The employee must enroll to receive this benefit.

§ 4.5. Vision Plan

Three plan options are available under this Program. Plan 1 is a full service plan covering exams and materials. Plan 2 is a basic plan covering materials. Plan 3 is an enhanced plan which covers a more extensive eye exam as well as materials. All three provide in-network and out of network benefits.

Flexible Benefits Policy

§ 4.6. Voluntary Accidental Death and Dismemberment (AD&D) Insurance

This voluntary plan pays a benefit as the result of death or loss of limb due to an accident. The coverage is effective 24 hours a day, 365 day a year. It includes accidents on or off the job and also includes Emergency Travel Assistance services.

§ 4.7. Voluntary Group Term Life

This coverage pays a benefit to your beneficiary (ies) if you die while covered by this policy. New employees are guaranteed up to $100,000 coverage without answering any medical questions. This is strictly a term life policy that provides a benefit as the result of death. There is no accumulated cash value.

§ 4.8. Critical Illness

This plan is designed to complement your existing medical coverage. Employees may receive a lump sum benefit of up to $15,000 per category, if the illness meets the criteria. This payment may be used for expenses such as mortgage payments, prescriptions drugs, rehabilitation and childcare.

§ 4.9. Cancer Insurance

Three plan options are available under this Program. Choose between Low Option, High Option or Premium Option. Each Option offers the same type of benefits and/or services but pay out at a different percentage. New employees may enroll without answering any medical questions. In addition to paying for Cancer related expenses this plan also covers 29 other specified diseases including indirect expenses incurred during cancer treatment such as food, lodging, transportation and missed work.

§ 5. Information Sources

The Office of State Human Resources continuously works to expand NCFlex to include other benefits for State employees. Updates and enrollment packages will be made available to employees through the work locations Personnel Office. Annual enrollment for the NCFlex Program is in October. Visit the web site: https://oshr.nc.gov/state-employee-resources/benefits/ncflexfor additional information.

Flexible Benefits Policy

§ 6. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-95

§ 7. History of This Policy

Date	Version
January 1, 2002	• Updates wording of Flexible Benefits Program.
April 1, 2009	• Updates Flexible Benefits Program

Form I-9 and Employment Eligibility Verification Policy

Contents:

§ 1. Policy

The federal Immigration Reform and Control Act (IRCA) amended the Immigration and Nationality Act by making it unlawful to hire, recruit or refer for a fee any individual who is not authorized to accept employment in the United States. This law seeks to preserve jobs for those who are legally entitled to them, and states that the employer must hire only United States citizens or noncitizens[1] who are authorized to work in the United States. Additionally, under the State Human Resources Act, all North Carolina State agencies, departments, institutions, community colleges, and local education agencies shall verify, in accordance with the E-Verify Program, each individual's legal status or authorization to work in the United States.[2]

Advisory Note: For the processes described in this policy, employers should ensure their procedures limit the possibility that sensitive employee information is transmitted to an unintended recipient or stored in an incorrect employee file. For that reason, agencies should institute procedures to require sequential, rather than concurrent, processing of these documents. This means that only one Form I-9 is verified at a time. All documents related to

[1] The federal I-9 form, as updated 8/1/2023, replaces the term "alien" with the term "noncitizen."
[2] N.C.G.S. § 126-7.1(i). The "Basic Pilot Program" described in this statute is now the E-Verify program.

Form I-9 and Employment Eligibility Verification Policy (cont.)

the verification process must be closed or securely stored away before starting any new Form I-9 or E-Verify processes.

§ 2. Work Authorization

§ 2.1. Form I-9, Employment Eligibility Verification

To ensure compliance with its provisions, IRCA mandates that employers certify the employment eligibility of all new employees (including United States citizens) hired on or after November 7, 1986, by requiring completion of the employment eligibility verification form, Form I-9, within three days of employment.

Verification of employment eligibility is not required for persons hired on or before November 6, 1986 who have been continuously employed by the same North Carolina agency since that date. If a current State employee accepts a position in a different North Carolina state agency, their employment eligibility must be confirmed by the completion of a new Form I-9.

This procedure must be consistently followed with regard to every employee for whom verification of employment eligibility is required.

Employers should ensure they are using the correct version of the Form I-9.[3] The current version of the Form I-9 and corresponding instructions can be found on the United States Citizenship and Immigration Services (USCIS) website at https://www.uscis.gov/i-9.

§ 2.2. Physical Document Examination

The default method of verifying an employee's Form I-9 documentation is physically examining the documents that an employee supplies, along with the Form I-9, to verify the identity and authorization of an employee to work in the United States.

[3] Beginning November 1, 2023, only the new Form I-9 dated "08/01/2023" may be used. The version date can be found at the lower left corner of the form.

Form I-9 and Employment Eligibility Verification Policy (cont.)

§ 2.3. Remote Verification of Form I-9 Documentation (Optional Alternative Procedure to Physical Document Examination)

If an employer is in good standing with E-Verify, it is qualified to remotely examine an employee's documentation using an alternative procedure authorized by the Department of Homeland Security (DHS) at any distinct E-Verify hiring site. If an employer chooses to offer the remote verification alternative procedure to new employees at an E-Verify hiring site:

- They must do so for all employees at that site, or
- They may choose to offer the alternative procedure for new hires who are field/home-based or full-time telework and continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity.

If an employer offers remote verification, employees are not obligated to participate in remote verification and may choose to present their documents for physical examination.

If an agency or E-Verify hiring site chooses to utilize this option to use remote verification, the agency or E-Verify hiring site must develop a remote verification procedure that includes, at minimum, the following steps:

1. The employee must complete Section 1 of Form I-9 no later than the first day of work for pay and transmit to the employer. **The Form I-9 must be submitted by the employee via a secure file transfer protocol (SFTP) client software, or other secure file share solution that has been approved by the Enterprise Security and Risk Management Office (ESRMO).** Each agency or university should consult with its agency Chief Information Officer (CIO), Chief Information Security Officer (CISO), or delegated authority to arrange a secure method for transmission of documents.
2. The employee must transmit front and back copies of documents to be examined remotely prior to the live video interaction. **Documents must be submitted by the employee via the secure file share solution identified above.**
3. An employer representative must examine copies (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt to ensure that the

Form I-9 and Employment Eligibility Verification Policy (cont.)

documentation presented reasonably appears to be genuine and relates to the employee.

4. The employer representative must conduct a live video interaction with the individual presenting the document(s) to ensure that the documentation reasonably appears to be genuine and relates to the individual. The employee must present the same document(s) during the live video interaction that were submitted to the agency prior to the video interaction. The employer representative must complete Section 2 of the Form I-9. This step must occur within three business days of the first day of work for pay[4]; and
5. The agency must retain a clear and legible copy of the documentation (front and back if the documentation is two-sided) for as long as the employee works for the agency, plus the specified period after their employment has ended. Refer to Section 6.2 of this policy for retention requirements.

You can find additional information about remote examination of documents at https://www.uscis.gov/I-9-central/remote-examination-of-documents.

§ 3. E-Verify Program-Employment Authorization Confirmation

In addition to the I-9 process, electronic verification using the internet-based E-Verify Program is required for every newly hired employee who began work in an agency/university on or after January 1, 2007, except in the case of Local Education Agencies (LEAs). Verification by the E-Verify Program is required for all LEA employees who were newly hired on or after March 1, 2007. This program is only to be used to determine the employment eligibility of newly hired employees. Attempting to verify the employment eligibility status of a person who was employed by the State before January 1, 2007 is strictly prohibited. Verification of an employee's eligibility to work in the United States through the E-Verify system should be completed after the Form I-9 and

[4] This means if your employee began work for pay on Monday, you must complete Section 2 by Thursday of that week.

Form I-9 and Employment Eligibility Verification Policy (cont.)

associated documents have been received and examined, but within three business days of the employee's first day of work for pay.

After a case is submitted in E-Verify, the agency representative will receive an immediate result of either Employment Authorized, Tentative Non-Confirmation, or Verification in Process. Employers may not terminate, suspend, delay training, withhold or lower pay, or take any other adverse action against an employee because of a "Verification in Process" or "Tentative Non-Confirmation" result. Please refer to the E-Verify website (www.e-verify.gov) or the E-Verify User Manual (available at www.e-verify.gov/e-verify-user-manual) for detailed information on steps the employer must take when a "Verification in Process" or "Tentative Non-Confirmation" result is received.

A designated representative from each State agency, department, institution, community college, and local education agency is required to agree to and sign the Department of Homeland Security's Memorandum of Understanding in order to begin using the E-Verify Program.

§ 4. When to Verify Eligibility

An agency may not request documentation that a person is eligible to work in the United States until an offer of employment is made and accepted by the candidate. For that reason, an employing agency or university must secure proper administrative approvals and must complete all pre-employment screening before an offer of employment is made. In certain cases, the offer of employment may be conditional, but the conditions of the pending offer must be clearly stated to the candidate, and must be otherwise legally valid. Only after that offer of employment is made may the agency or university request documents for the completion of the Form I-9 and the verification.

For a United States citizen or permanent resident, if documentation is unavailable at the time of initial employment, and the employee has applied for that documentation, a receipt for that application is required, within the first three days of employment, for completion of the Form I-9. The employee must produce the original document within ninety days of hire. The E-Verify verification may be delayed until the employee submits the original documents.

Form I-9 and Employment Eligibility Verification Policy (cont.)

Failure to complete the Form I-9 or to provide documentation within three business days will result in the employee's separation from State employment.

§ 5. Continuing Employment (Employees Not Considered "Newly Hired")

Employers must complete a new Form I-9 when a "hire"[5] takes place. A "hire" has not taken place if the individual is continuing in their employment and has a reasonable expectation of employment at all times.

A "hire" **does not include**:

- an employee returning from a paid or unpaid leave approved by the employer;
- an employee who has been promoted, demoted, reassigned, or received a horizontal transfer, but has not changed agencies/universities;
- an employee returning from a reduction-in-force if returning to the same agency/university;
- an employee returning after a wrongful discharge; or
- an employee engaged in seasonal employment that has a reasonable expectation to return to work in the same capacity.

§ 6. Storage and Retention of Documentation

§ 6.1. Storage of Documents

Employers may use a paper system, an electronic system, or a combination of paper and electronic systems to store Form I-9 and associated documents. Paper copies of the documents presented by employees may be stored with the employee's Form I-9 or with the employees' records. However, USCIS recommends that employers keep Form I-9 separate from personnel records to facilitate an inspection request.

Both physical and electronic I-9 verification folders contain sensitive personal information. This information must be safeguarded. Paper documents should be, at minimum:

[5] Additional information regarding a "hire," per USCIS, versus continuing employment may be found at https://www.uscis.gov/i-9-central/complete-correct-form-i-9/continuing-employment.

Form I-9 and Employment Eligibility Verification Policy (cont.)

- stored in locked filing cabinets,
- with access limited to employees who complete Form I-9s or E-Verify cases, and other employees who are authorized to have access to employee personnel records.

An electronic storage system must:

- Include controls to ensure the protection, integrity, accuracy and reliability of the electronic generation storage system.
- Include controls to detect and prevent the unauthorized or accidental creation of, addition to, alteration of, deletion of or deterioration of an electronically completed stored Form I-9, including the electronic signature, if used.
- Include controls to ensure an audit trail so that any alteration or change to the form since its creation is electronically stored and can be accessed by an appropriate government agency inspecting the forms.
- Include an inspection and quality assurance program that regularly evaluates the electronic generation or storage system, and includes periodic checks of electronically stored Form I-9, including the electronic signature, if used.
- Include a detailed index of all data so that any particular record can be accessed immediately.
- Produce a high degree of legibility and readability when displayed on a video display terminal or reproduced on paper.[6]

HR Staff should confer with your CIO, CISO or delegated authority on the best way to ensure any electronic storage of Form I-9s and associated documents meets these requirements.

§ 6.2. Retention of Documents

Agencies are required to retain Form I-9s for the duration of a person's employment. If a person separates from an agency or university, the form must be kept

[6] Retention and Storage | USCIS, www.uscis.gov/i-9-central/complete-correct-form-i-9/retention-and-storage

Form I-9 and Employment Eligibility Verification Policy (cont.)

on file for at least three years after the person's start date, or for one year after the separation date, whichever is later. Confirmations that new employees have been verified as eligible to be employed through E-Verify should be attached to Form I-9s and maintained for the same length of time as the Form I-9.

Advisory Note: If utilizing a paper-based storage system, documents used to establish work authorization should be photocopied and stapled to the original Form I-9. If utilizing an electronic storage system, these documents should be scanned and added to the employee's Employment Verification folder.

Proof of legal employment eligibility in the United States must be maintained throughout an employee's tenure with the employer. Therefore, State agencies, departments, institutions, community colleges, and local education agencies must remain cognizant of the fact that certain employees may only be legally eligible to work in the United States for limited periods of time. If an employee's legal employment eligibility is temporary, it is the employer's responsibility to verify that the employee renews their employment eligibility or separate that person from employment upon expiration of the temporary eligibility period.

§ 7. Re-verification

Re-verification of an employee's eligibility to work in the United States should only be conducted on those employees who attested in Section 1 of the Form I-9 that they are noncitizens authorized to work in the United States for a limited period of time. Reverifications are not required, and are not permitted to be completed, on United States Citizen and Lawful Permanent Resident employees. The E-Verify Program is not to be used for reverification purposes. Thus, reverification of employment eligibility only involves the physical examination of employment eligibility documents, not the electronic verification of those documents. If the employee's documents are reverified electronically, the employer will be in violation of the Memorandum of Understanding, which details the employer's E-Verify Program obligations, as required by the United States DHS.

Form I-9 and Employment Eligibility Verification Policy (cont.)

§ 8. Sources of Authority

This policy is issued pursuant to any and all of the following:

- N.C.G.S. § 126-4(3), which authorizes the State Human Resources Commission to establish policies governing "reasonable qualifications as to … job-related requirements pertinent to the work to be performed."
- N.C.G.S. § 126-4(4), which authorizes the State Human Resources Commission to establish policies governing "[r]ecruitment programs designed to … determine the relative fitness of applicants for the respective positions."

This policy is compliant with:

- 8 U.S.C. § 1324a, Immigration Reform and Control Act
- N.C.G.S. § 126-7.1(i) which states that each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States.
- 25 NCAC 01H .0636, which establishes that all State agencies "shall, no later than the third working day after the hire, verify the employment eligibility of all employees hired after November 6, 1986," using the E-Verify program.

§ 9. History of This Policy

Date	Version
September 1, 2007	New Policy. New policy on employment of foreign nationals in the United States.
December 3, 2020	Policy reviewed. Advisory note is now included in the body of the policy. Policy is correct and operating as written.
October 19, 2023	Changed the name of the policy from "Immigration/Employment of Foreign Nationals Policy" to "Form I-9 and Employment Eligibility

Form I-9 and Employment Eligibility Verification Policy (cont.)

	Verification Policy." Added a footnote to explain that the "Basic Pilot Program" is now called "E-Verify." Changed the term "alien" to "noncitizen" to match language on revised Form I-9. Revised the first advisory note to explain that, given the sensitive nature of the information contained on Form I-9s, documents should be processed sequentially, rather than concurrently, meaning only one Form I-9 and associated documents should be processed at one time. Detailed the requirements for a remote verification of Form I-9 documentation procedure, including the requirement for secure transmission of personally identifiable information. Added language to Section 3, E-Verify, to explain employers may not take adverse employment actions when certain results are received from E-Verify. Included references and links to the E-Verify website and manual. Edited Section 5, Continuing Employment, to utilize language more consistent with USCIS guidance. Added information on the appropriate storage of paper and electronic Form I-9s and associated documentation to Section 6. Added "Sources of Authority" section.

General Leave Policy

Contents:

§ 1. Leave Offsetting

Hours worked in excess of the employee's established work schedule shall be used to offset leave reported in the same overtime period. The purpose of paid leave is to maintain employee income, not enhance it. If employees work additional hours outside their normal schedule in a work week in which they also have scheduled or taken time off, the additional time worked "offsets" the time that the employee intended to cover with available leave. Therefore, the number of leave hours originally charged must be reduced by the number of additional hours worked. This offset is mandatory; the employee cannot be paid both for the leave time and the time outside of the normal schedule. It does not apply to Holidays, Civil Leave and Other Management Approved Leave.

§ 2. Sources of Authority

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E

§ 3. History of This Policy

Date	Version
January 1, 2011	• First version.

General Payment Policy

Contents:

§ 1. Pay Status

An employee is in pay status when working, when on paid leave (lump sum payment of vacation leave upon separation is not paid leave status), or when on workers' compensation leave. An employee is not in pay status after the last day of work when separated because of resignation, dismissal, death, retirement and reduction in force.

§ 2. Total Compensation and Total Employment

An employee being paid for full-time employment shall not receive additional compensation for additional work performed for the State except as provided under the dual employment policy and under the overtime policy. Under the dual employment policy, an agency may secure the services of an employee in another agency on a parttime, consulting, or contractual basis when the demand for an employee with special skills and abilities is required for efficient operation of a program.

It is necessary that the practice of cross-hiring in State government be carefully controlled. Such arrangements should take into consideration such factors as the character of the services to be performed, the effect on the morale of other State employees, the ethical considerations involved, the temporary loss of services of the individual to the parent agency, the possible reduced efficiency of the individual as a result of fatigue or inattention to primary responsibilities, the urgency of the situation,

General Payment Policy (cont.)

possible alternative arrangements, and other pertinent factors. See Dual Employment Policy in the Employment and Records Section.

§ 3. **Overtime Pay**

State agencies are subject to the Federal Fair Labor Standards Act. See the Hours of Work and Overtime Compensation Policy for policy provisions on overtime pay.

§ 4. **Payment of Salary to Current Employees**

Every State agency shall pay every employee all wages earned and accruing to that employee on the regular payday for that agency. If circumstances preclude payment on the regularly scheduled payday, then payment shall be made as soon as possible, but not later than the next scheduled period. This policy shall not be construed to require agencies to pay FLSA exempt employees for compensatory time earned and accrued.

§ 5. **Direct Deposit of Payroll Policy, Office of the State Controller**

It is the policy of the State of North Carolina that all SPA and EPA employees paid by a payroll center administered by the Office of the State Controller (OSC) be required to use the direct deposit feature to receive payroll related payments. In accordance with federal requirements regarding direct deposit of payroll, the employee may select the financial institution of his/her choice to accommodate the receipt of direct deposit payments.

As a condition of employment, all newly hired or rehired employees on or after August 1, 2007, shall be required to enroll in the direct deposit feature within thirty (30) days of hire or rehire. Any such employee who does not complete the appropriate direct deposit enrollment form within 30 days of hire or rehire, and who is not granted an exemption as provided herein, may be subject to dismissal.

An employee may be exempted from participating in the direct deposit feature if he/she does not have an account at an eligible financial institution, and further provides evidence that he/she cannot obtain an account at an eligible financial institution.

General Payment Policy (cont.)

In his/her role of prescribing the manner in which agencies make disbursements, the State Controller has exclusive authority to grant any exemption from the direct deposit requirement. A personal exemption may only be granted for the reason stated above (i.e., unable to acquire an account at a financial institution) or other specific situation that the State Controller may deem to be an extreme hardship. An employee desiring to request an exemption from the direct deposit requirement shall do so by completing a "Direct Deposit Exemption Request Form (OSCPXA22)."

The State Controller may allow for a business exemption for direct deposit to accommodate the payroll center's special business needs, such as payment cancellations and re-writes, limited employment period, categories of employees not eligible for direct deposit, etc. Distribution of checks for a business exemption shall be determined by the State Controller.

For those employees who are granted an exemption, the State Controller may secure and offer other payment methods as options, other than paper check, when such options may become available.

§ 6. Payment of Salary to Separated Employees

Employees who separate from employment with the State shall be paid all salary due no later than the next scheduled payday. If the date of separation precludes payment on that date, then payment shall be made as soon as possible, but not later than the next scheduled period.

No money shall be withheld from a final payment to a separated employee except for reasons set forth in this policy or as otherwise provided for by law of the rules of the Office of State Budget and Management.

Money may be withheld from a final salary payment for the following:

- to recover the cost of State property, equipment, uniforms, tools or other items owned by the State and not returned to the employing agency, and
- for overdrawn vacation or sick leave or other financial obligation to the employing agency arising out of the employment relationship outstanding at the time of the employee's separation.

General Payment Policy (cont.)

Money shall not be withheld for failure by the separated employee to perform one or more job responsibilities or other work-related acts prior to separation.

§ 7. Notice of Deductions

An employee shall be notified in advance in writing of any deductions to be made from the final payment of salary pursuant to this policy. The notice shall specify what amounts are being deducted and the reasons.

§ 8. Posting of Notice

Provisions of the policy shall be posted prominently at least in every agency personnel office and elsewhere as the employing agency deems necessary.

§ 9. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2),(5)
- 25 NCAC 01D .0100

§ 10. History of This Policy

Date	Version
January 1, 1976	Adds statements describing the compensation plan and establishment of salary ranges
July 1, 1983	Definition of Pay Status revised to delete while drawing workers' compensation up to a maximum of 12 months and add when drawing workers' compensation.
October 1, 1983	Definition of Pay Status revised to delete "while drawing workers' compensation and add while on workers' compensation leave."
February 1, 1985	Policy for SPA employed Educators added.
January 1, 1989	Definition of pay status changed due to change in method of calculating daily rates of pay from the calendar day method to the workday method.

General Payment Policy (cont.)

January 1, 1990	Compensation of State Employees added. Compensation Plan revised to include special entry and geographic differentials.
July 1, 2005	Revised to eliminate hiring rate.Changed “permanent” to “career.”
January 1, 2009	Added State Controller Policy on Direct Deposit.
September 1, 2012	Added notification requirements related to the availability of funds to comply with G.S.143C-6-8(b)
April 14, 2022 (effective June 1, 2022)	Renamed policy “General Pay Policies” to “General Payment Policy.” Moved material on compensation plans for state employees, salary ranges, and availability of funds to the new Pay Administration Policy.

Governor's Awards for Excellence Policy

Contents:

§ 1. Policy

The State of North Carolina has long been noted for loyal, efficient and dedicated employees who provide valuable services in all areas of State government. The Governor's Awards for Excellence was created to acknowledge and express appreciation for outstanding accomplishments made by employees of the State. The accomplishments need not fall entirely within the scope of normal duties but shall be a major contribution reflecting credit on the person and State service. The meritorious service or accomplishment must be so singularly outstanding that special recognition is justified. The award is the highest honor that a State employee may receive for noteworthy service to State government and the people of North Carolina.

§ 2. Award Categories

Awards may be made in the following categories:

- Customer Service: Provided exceptional service that left the customer fully satisfied with their experience. Exceeded expectations to meet the needs of the customer. Added value to the customer experience.
- Efficiency and Innovation: Initiated fruitful study and investigation or has successfully established new and outstanding methods, practices, plans or designs (such as pioneering or research and development work in administration,

Governor's Awards for Excellence Policy (cont.)

engineering, productivity, agriculture, medicine, natural resources, the social science, etc.).

- Human Relations **–** Made outstanding contributions toward enhancing the quality and morale of the workplace or creating a better public image of State government (such as positive personal interaction with other employees, public awareness, working on relations internally within an agency, or collaboration between different agencies).
- Outstanding State Government Service - Exhibited unselfish devotion to duty far and above normal requirements and has contributed significantly to the advancement of State service to the citizens of North Carolina.
- Public Service **–** Made outstanding contributions by participating in or implementing community and public service projects (such as volunteering with various non-profit organizations.)
- Safety and Heroism - Demonstrated outstanding judgment or courage in an emergency, voluntarily risking his/her life, or exhibited meritorious action to prevent injury, loss of life or prevented damage to or loss of property.
- Spirit of North Carolina**:** Exemplified state motto "To be, rather than to seem." Mentored others in the pursuit of excellence. Served as an ambassador for the State of North Carolina. This special award is reserved for exceptional circumstances and for accomplishment and achievements of the highest caliber.

§ 3. **Definitions**

Meritorious or Outstanding Performance **–** performance which surpasses the range of normally expected performance. The possibilities for varying levels of performance above normal expectation are infinite. An employee might be superior as to quality of work and be satisfactory in all other respects or be superior on quality and quantity and be satisfactory in meeting other requirements. When the employee becomes superior in all factors, performance is in the upper range of superior and may be considered in the area of meritorious or outstanding performance, for example, a level of performance in all aspects of work which exceeds normal requirements to such an extent that each is considered worthy of special commendation.

Governor's Awards for Excellence Policy (cont.)

Establishing the upper limit of performance beyond which awardable performance begins can seldom be done with a precision which will substitute for human judgment in each specific instance. It can be said in general that the minimum required level should not be so high as to be unattainable by employees who are generally recognized as performing in an outstanding manner, nor so low that awards lose their significance by being easily obtainable.

Special Act or Distinguished Accomplishment **-** a singular contribution which may be relatively easy to identify and relates to generally known human experience and standards of public service. This might be an act of heroism. A definition of a standard would not be necessary for such cases, and it should not be difficult for a person having knowledge of the accomplishment to prepare a recommendation for consideration.

Permanent Appointment – employees in the executive departments, staff on small boards and commissions designated as subject, staff in the university system designated as subject and at the discretion of each university may include exempt faculty and exempt administrative.

§ 4. Selection Criteria

Nominations may be made for meritorious or outstanding performance or for a special act or distinguished accomplishment. The performance upon which the selection is based must be clearly above and beyond that which would be expected from dedicated employees who are fully and competently discharging all of the duties and satisfying all of the requirements of their job. When the accomplishment is closely connected with the performance of normal duties, it may be necessary to consider how it was beyond the scope of normal activity.

§ 5. Eligibility Criteria

The following persons are eligible for nomination:

- Employees who have a permanent or time-limited appointment.
    - This includes, but is not limited to, the managerial and administrative levels.

Governor's Awards for Excellence Policy (cont.)

- A deceased employee, former employee, or an employee on leave-without-pay may be nominated, provided the achievement for which the nomination is made occurred during State employment within the award year.
- Temporary employees may be nominated if, and only if, they are part of a team that also includes permanent or time-limited employees.
- Employees who were nominated, but did not receive the Governor's Awards for Excellence, may be nominated again in a succeeding year.
- Nominations may be made for an individual or a team.
- Nominations may be made for achievements at any level of employment with consideration given to the relative opportunities for accomplishment afforded by the individual's position. Employees may nominate peers and/or managers and vice versa.

§ 6. **Employees Not Eligible**

The following employees are not eligible for nomination:

- Contractors;
- Elected officials, department heads and university chancellors;
- Employees of the public school system or community colleges;
- Employees of the judicial branch; and
- Employees of the General Assembly.

§ 7. **Program Administration**

The Awards Program is administered by the Office of State Human Resources.

§ 8. **Awards Committee Members**

A Governor's Awards for Excellence Selection Committee shall make annual selection of those State employees to receive the Awards for Excellence. The Committee shall consist of five members. All members shall be appointed by the Office of State Human Resources. At a minimum, at least one member from the State Employees Credit Union will be on the Selection Committee. Terms of appointment will be evaluated each year.

Governor's Awards for Excellence Policy (cont.)

§ 9. **Awards Committee Responsibilities**

The Committee will select the employees to receive the Governor's Awards for Excellence from the nominations submitted by agencies as follows:

- Nominations will be ranked independently by each member of the Committee.
- Upon complete evaluation of all eligible candidates, selection of the award recipients will be made by a committee majority vote.

The Committee and the Office of State Human Resources will plan and conduct an appropriate ceremony in keeping with the significance of the awards.

§ 10. **Agency Responsibilities**

Departments and universities policies and procedures for selection will be monitored by the Office of State Human Resources. Agencies and universities may design their selection process to include the following:

- Establish a program to recognize annually, within the agency, meritorious or outstanding performance or special act or distinguished accomplishments within the seven designated categories. The program may provide for one or more awards depending on the organizational structure and size of divisions or major programs within the department or university.
- Eligibility of employees exempt from the State Human Resources Act shall be at the discretion of each university.
- Provide for an Awards Committee to be responsible for the processing of awards, suitable ceremonies for presentation of awards, and to promote participation in the program by all eligible employees.
- Select the most deserving of their nominees for submission to the Governor's Awards for Excellence Program for its consideration. The number of nominations that may be submitted by each department or university will be determined by the Office of State Human Resources annually based on the total number of permanent employees in subject positions that are eligible at the beginning of the nomination process.

Governor's Awards for Excellence Policy (cont.)

Suggested guidelines for number of nominations:

If your agency/university has:	You are eligible for no more than:
Less than 300 employees	3 nominations
300 employees but less than 2,000	6 nominations
2,000 employees but less than 10,000	8 nominations
10,000 or more employees	12 nominations

- Following prescribed guidelines and the standard nomination form, submit to the office of State Human Resources the nominees to be considered for the Governor's Awards for Excellence.
- Agencies submitting nominations to the Governor's Awards Selection Committee shall commit, by the signing of the nomination form, to support the nominees/recipients by providing time and travel to attend the Governor's Awards Ceremony.

§ 11. **Awards Ceremony**

Awards will be presented annually by the Office of State Human Resources Director at a ceremony in keeping with the importance of this award.

§ 12. **Type of Award**

The award will be representative of the significance of this award as being the highest honor a State employee can receive.

§ 13. **Number of Awards**

The number of awards presented by the Office of State Human Resources Director will depend upon the nature of recommendations received and the Committee's evaluations and selections. Every effort will be made to recognize the most significant accomplishments;

Governor's Awards for Excellence Policy (cont.)

however, the number of recipients must be in keeping with the nature of the award as the highest honor available to State employees.

§ 14. **History of This Policy**

Date	Version
January 1, 1989	First version
August 2, 1993	Revises committee membership
December 1, 1995	Revised Program
April 1, 1978	• Award Categories: Definitions of the Award Categories have been clarified. • Award Ceremony: The award ceremony is no longer held during Employee Appreciation Week. The policy has been changed to "Awards will be presented annually during the week proclaimed by the Governor as 'Excellence in State Government Week." • Type of Award: The award is no longer a mounted plaque. The policy is changed to "The award will be representative of the significance of this award as being the highest honor a state employee can receive." • Number of Awards: The number of awards should not be limited to a specific number. The policy has been changed to "The number of awards presented by the Governor will depend upon the nature of recommendations received and the Committee's evaluations and selections. Every effort will be made to recognize the most significant accomplishments; however, the number of recipients must be in keeping with the nature of the award as the highest honor available to State employees."
November 1, 2000	•Memorandum, State Personnel Manual Changes – Revision No. 3, dated 3-7-2000 advised: "The advisory note at the bottom of Section 6, Page 25 was omitted from some of the Personnel Manual copies. If it is already included in the copy you have, disregard this change."

Governor's Awards for Excellence Policy (cont.)

January 1, 2003	• Name changed from Governor's Award for Excellence to State Employee Awards for Excellence. • Revision 8 Corrects "Employee Appreciation Week" to "Excellence in State Government Week."
March 1, 2009	• Name changed from State Employees' Awards for Excellence to Governor's Awards for Excellence.
August 4, 2016	• Updated the policy to include two new award categories. There are seven award categories total now, instead of five. Customer Service category and Efficiency and Innovations have now been added to the policy. Also added to the policy a suggested guidelines chart that displays number of nominations per Agency or University, based on size.
March 2, 2017	• Deleted Advisory note referencing special leave policy because it is misleading. There is no special leave associated with winning a Governor's Award. Travel time and time to attend the Ceremony and events are all granted and addressed at the bottom of page 9 and the top of page 10 where it is noted that: "Agencies submitting nominations to the Governor's Awards Selection Committee shall commit, by signing of the nomination form, to support the nominees/recipients by providing time and travel to attend the Governor's Awards Ceremony."
September 3, 2019	• Corrected typographical errors (i.e. use of ;) and consist use of Office of State Human Resources from Office of State Personnel.
June 4, 2020	• Policy reviewed by the Recruitment Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on June 4, 2020. • General editorial changes to text, grammar, and language. All changes were minor wording and format changes for clarification.
July 14, 2022	• Clarification that time-limited employees are eligible.

Governor's Awards for Excellence Policy (cont.)

	• Clarification that contractors are not eligible. • Policy revised to provide that temporary employees are eligible if and only if, they are part of a team that also includes permanent or time-limited employees. • Shortened text about eligibility of executive staff, so that it is not misunderstood as suggesting that the award is primarily intended for executive staff.

Grievance Review by State Agencies and the Office of State Human Resources and Available Remedies Policy

Contents:

The following policies shall govern the review of employee grievance by State Agencies and the Office of State Human Resources and the availability of remedies for those grievances.

§ 1. Exercise of Discretion

Decision makers considering employee grievances concerning disciplinary action shall weigh all relevant factors and circumstances, including factors of mitigation and justification, when making a decision as to whether there is just cause for disciplinary action.

§ 2. Mediation/Settlement/Consent Agreements in Grievances, Contested Cases

Any mediation agreement, settlement agreement, or consent agreement in a grievance or contested case that requires the entering of data into human resources and payroll information system used by agencies with employees subject to Chapter 126, must be approved by the Office of State Human Resources for compliance with all rules in Title 25 of the North Carolina Administrative Code before the agency enters the data.

Data is required to be entered into the human resources and payroll information system by an agency when it determines that an action must be taken that affects classification, salary, leave, demotion, reassignment, transfer, or for any other human resources action, except where the only personal action taken as a result of the settlement is the substitution of a resignation for a dismissal.

Approval by the Office of State Human Resources shall be indicated by the signature of the State Human Resources Director or his designee in an appropriate place on the settlement or consent agreement or by other means acceptable to the Office of State Human Resources Director. This provision shall not be construed to

Grievance Review by State Agencies and the Office of State Human Resources and Available Remedies Policy (cont.)

require Office of State Human Resources approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Human Resources Commission.

This policy shall also not be construed to require approval of any settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.

The provisions of 25 NCAC 01A .0104 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from the Commission's rules or policy. This compliance shall be in addition to the requirements of this policy. Any agreement that contains a provision that requires an exception to or variance from existing human resources policy must be reviewed and approved by the Office of State Human Resources Director prior to the processing of any human resources action forms by the Office of State Human Resources or the university human resources and payroll system.

Requests to enter data into the State's human resources and payroll system that are required by the provisions of any settlement or consent agreement that has not been approved by the Office of State Human Resources as required, shall not be processed by the human resources and payroll information system used by agencies with employees subject to Chapter 126, and shall be returned to the agency without action.

§ 3. Back Pay

Back pay may be awarded in all cases in which back pay is warranted by law. An award of full or partial back pay is not dependent upon whether reinstatement is ordered.

Gross back pay shall always be reduced by any interim earnings, except that interim earnings from employment which was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance paid to the employee shall also be deducted from the gross back pay amount due, if unemployment benefits were not taxed when received by the employee. All applicable state and federal withholding taxes, including social security taxes shall

Grievance Review by State Agencies and the Office of State Human Resources and Available Remedies Policy (cont.)

be paid from the reduced gross back pay due; reduced gross back pay being gross back pay due minus interim earnings or unemployment insurance received. The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due. Back pay shall include payment for all holidays which the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall never be a part of any back pay award. Shift premium pay shall be a part of a back pay award, if the grievant would have been entitled to such pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote. Employees shall not be entitled to any discretionary pay which may or may not have been awarded to them in the absence of the interruption in employment (for example, performance-based increases). Back pay shall include any across the board compensation which would have been included in the grievant's regular salary except for the interruption in employment. This includes one-time "bonuses", across the board legislative increments or across the board legislative pay increases. If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the pro-rated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his longevity date, no adjustment for longevity pay shall be made in the back pay award. The pro-rated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.

Back pay must be calculated and submitted to the Office of State Budget and Management for approval. One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available, suitable employment following separation from state government.

§ 4. Front Pay

Front pay is the payment of an amount to an employee above the regular salary, such excess amount representing the difference between the employee's salary in the current position and a higher salary determined to be appropriate. An award of front

Grievance Review by State Agencies and the Office of State Human Resources and Available Remedies Policy (cont.)

pay may result from a finding of discrimination, or an order of reinstatement to a position of a particular level, which the agency is unable to accommodate immediately. Front pay shall be paid for such period as the agency is unable to hire, promote or reinstate the employee to a position at the appropriate level and as warranted by law. Front pay shall terminate upon acceptance or rejection of a position offered which meets the agency's legal obligation. Front pay shall be available as a remedy in cases involving hiring, promotion, demotion or dismissal. Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and regular deductions for state and federal withholding taxes and employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the grievant. Shift premium pay and holiday premium pay shall not be available on front pay.

§ 5. Leave

An employee shall be credited on reinstatement with all vacation leave which would have been earned except for the interruption in employment. An employee shall be credited on reinstatement with all sick leave which would have been earned except for the interruption in employment.

The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable. Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the credit for sick leave which would have been earned except for the dismissal.

§ 6. Health Insurance

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee elects reimbursement

Grievance Review by State Agencies and the Office of State Human Resources and Available Remedies Policy (cont.)

the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement. It is the responsibility of the employee to provide proof of insurance expenses incurred during the period of unemployment.

§ 7. Interest

The state shall not be required to pay interest on any back pay award.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126; N.C. Sess. Law 2011-398

It is compliant with the Administrative Code rules at:

- 25 NCAC 01J .1300

§ 9. History of This Policy

Date	Version
January 1, 2012	On July 25, 2011, Senate Bill 781 (Session Law 2011-398) was passed into law which took away the ability of the State Human Resources Commission (SHRC) to hear and render decisions in contested employee grievance cases. Prior to the ratification of this bill, the SHRC had the following duties: conduct hearings regarding contested cases, review the Administrative Law Judge's decision regarding contested cases, modify or accept the Administrative Law Judge's decision regarding a contested case, and render their own decision regarding contested cases. Before January 1, 2012, cases were heard by Office of Administrative Hearings (OAH) and then came back for a final decision by the State Personnel Commission (SPC). Effective

Grievance Review by State Agencies and the Office of State Human Resources and Available Remedies Policy (cont.)

	January 1, 2012, the Office of State Personnel (OSP) and the SPC were removed from any review of agency decisions. From January 1, 2012, to August 21, 2013, cases filed at the OAH had no review and oversight by the OSP or the SPC.
December 1, 2013	Effective August 21, 2013, the law changed and OSHR (formerly OSP) was given an oversight role in every case going to OAH. In addition, all cases are now required to go through the agency grievance process and be mediated. Only after mediation and review by OSHR can a case be filed at OAH.

Holiday Premium Pay Policy

Contents:

§ 1. Policy

Employees who are required to work on designated holidays shall be given, in addition to regular salary, premium pay equal to one-half of their regular straight-time hourly rate for such hours as are worked on these days. In addition, holiday compensatory time off shall be given, not to exceed 8 hours. This covers both FLSA non-exempt and exempt employees.

§ 2. Covered Employees

Full-time permanent, probationary, and time-limited employees are eligible for holiday premium pay.

Part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for holiday premium pay at a prorated amount. \

Temporary, intermittent, and part-time (less than half-time) are eligible for premium pay for actual hours worked on a holiday but are not eligible for equal time off.

§ 3. Designated Holidays

The State Human Resources Commission establishes one holiday schedule for most employees. Premium pay shall apply on any of the dates designated as holidays.

Institutions of Higher Education establish their own holiday schedule to accommodate academic programs; other institutions requiring a twenty-four hour operation establish a separate holiday schedule to accommodate holidays occurring on Saturday or Sunday when employees are required to work. In such cases, holiday premium pay applies to work performed on those holidays established by individual institutions.

Holiday Premium Pay Policy (cont.)

§ 3.1. Shift Schedules

If an agency or unit has regularly established work shifts that change at a time other than midnight, the time of shift change closest to midnight will set the hour limits of the day for purpose of computing premium pay. For example, if shifts change at 11:00 p.m., the holiday period will begin at 11:00 p.m. the night before and end at 11:00 p.m. on the night of the holiday.

§ 4. Holiday Compensatory Time

Holiday compensatory time (not to exceed 8 hours), at the convenience of the agency, shall be given if an employee is required to work on a holiday. This is necessary to avoid increasing the total work schedule of the employee beyond the hours for which the employee is compensated by regular salary.

Exception: If it is determined that the scheduling of the day off results in extraordinary management inconvenience or overtime pay for job coverage, the eight hours off may be paid for at straight time.

If possible, the time off should be scheduled within thirty days prior to or thirty days after the holiday occurs. If this is not done, the following applies:

- If equal time off is not given within 12 months, it shall be paid in the employee's next regular paycheck.
- Should the employee separate before the holiday occurs, it shall be deducted from the final paycheck.
- Should the employee separate after the holiday occurs and before the time off is given, it shall be paid in the employee's final paycheck.

Holiday compensatory time should be given as soon after the holiday as is possible. If the time off is not given by the end of twelve months, it shall be paid in the employee's next regular paycheck. In the BEACON HR/Payroll System, holiday compensatory time shall be given before any other leave/time (overtime compensatory time, gap hours compensatory time, on-call compensatory time, travel compensatory time, vacation or bonus leave).

Holiday Premium Pay Policy (cont.)

Overtime

Holiday premium pay is paid in addition to any overtime pay due. Premium pay for holiday work will not be included in determining the regular hourly rate of pay for the purpose of calculating overtime payments.

Example 1: Employee works 14 hours on the holiday (Wednesday) and doesn't take time off in the same week.

Time Recording	Total	M	T	W	Th	F	S	Su
Hours worked	46	8	8	14	8	8		

End Result:

Reg Hours	40
OT @ 1.5	6
Premium @ .5	14

Holiday Compensatory Balance will reflect 8 hours earned.

Example 2: Employee works 14 hours on the holiday (Wednesday) and takes Friday off in the same week.

Time Recording	Total	M	T	W	Th	F	S	Su
Hours worked	38	8	8	14	8			
Holiday Leave						8		

End Result:

Reg. Hours	46
Premium @ .5	14

Holiday Premium Pay Policy (cont.)

§ 5. Sources of Authority

- N.C.G.S. § 126-4(4)
- 25 NCAC 01D .1300

§ 6. History of This Policy

Date	Version
December 1, 1979	• Holiday premium pay equal to one half of their regular straight-time hourly wage.
January 1, 1975	• Revised holiday premium pay policy to include all holidays.
October 1, 1986	• Exception added to make it possible to pay for holiday worked instead of giving time off if it would result in overtime or extraordinary inconvenience.
June 1, 2003	• Advisory Note added to clarify that both FLSA non-exempt and exempt employees are eligible for holiday premium pay when the employee is required to work.
July 1, 2006	• Advisory Note added to clarify that premium pay for working on a holiday must be paid if the equal time off is not given within 12 months.
October 1, 2007	• 1) Changed the terminology from “equal holiday time off” to “holiday compensatory time.” • 2) Revised the Advisory Note under Holiday Compensatory Time to explain that in the BEACON HR/Payroll System, holiday compensatory time shall be given before any other leave/time (overtime compensatory time, on-call compensatory time, vacation or bonus leave).
July 1, 2009	• Revises Advisory Note to add gap hours compensatory time and travel compensatory time to leave hierarchy used in the BEACON HR/Payroll System.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointment types and career status.

Holiday Premium Pay Policy (cont.)

April 1, 2021	• Policy reviewed by the Total Reward-Salary Administration Division to update the Policy to be consistent with the formatting under the 2020 NC OSHR Policies Review Project and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on April 1, 2021. • Added “Policy” to the header, deleted the “Advisory Note” notations in the “Policy” and “Holiday Compensatory Time” sections and added them to the paragraph bodies of their respective sections and updated “Revised Date” to April 1, 2021.

Holidays Policy

Contents:

§ 1. Statutory Authority

The State Human Resources Act provides that the State Human Resources Commission shall establish a holiday schedule that shall not exceed 12 paid holidays per year and shall include Martin Luther King Jr.'s Birthday, Veterans Day, and three days for Christmas.

§ 2. Covered Employees

Full-time or part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for holidays. A holiday for full-time employees is 8 hours. Part-time employees receive holidays on a pro-rata basis.

Example: A half-time employee receives 4 hours for a holiday.

Temporary and part-time (less than half-time) are not eligible for holidays.

§ 3. Eligibility for Holidays

An employee is eligible for a holiday when the employee is:

- in pay status through the holiday, or,
- in pay status for one-half or more of the workdays and holidays in the month when a short leave without pay is involved.

An employee is not eligible for a holiday when:

- the holiday occurs before the beginning date of employment, or
- after the last day of work when an employee separates or goes on extended leave without pay (over half the workdays and holidays in a month).

Holidays Policy (cont.)

Exceptions: (1) If a holiday falls at the first of a month and the employee begins work on the first available workday, pay is received for the holiday or (2) If the holiday falls at the end of the month and the employee is in pay status through the last available workday, pay is received for the holiday.

§ 4. Holiday Schedule

The following holidays have been designated for observance. The schedule of actual dates is issued on a calendar year basis. Each agency shall post or issue written notice of the holiday schedule.

Holiday	Number of Days
New Year's Day	1
Martin Luther King, Jr.'s Birthday	1
Good Friday	1
Memorial Day	1
Independence Day	1
Labor Day	1
Veterans Day	1
Thanksgiving	2
Christmas	3

Note: Employee who works a schedule that is less than 12 months shall only be eligible for the holidays that occur during the months scheduled to work.

§ 5. Religious Observances

The agency shall make efforts to accommodate an employee's request to be away from work for certain religious holiday observances; however, nothing shall obligate the agency to make accommodation if, in accommodating the request, it would result in undue hardship on the agency or its employees.

The following factors shall be considered in accommodating religious holidays:

- the accommodation creates no greater risk to the health and safety of the employee, fellow employees, or the general public;
- by accommodating the unscheduled religious holiday, expenses to the State will not increase;

Holidays Policy (cont.)

- meaningful work can be provided under the circumstances in which the employee will be working; and
- supervision can be provided if deemed necessary.

Religious holidays shall be accommodated by:

- adjusting the work schedule of the employee to the extent that it does not significantly impact the rights of other employees, or
- allowing the employee to exchange another State government public holiday for the religious holiday. The unscheduled religious holiday and the State government public holiday shall occur in the same calendar year.

If the religious holidays cannot be accommodated by the above, the Vacation Policy shall be used. If an employee has accrued vacation leave, no request for vacation leave shall be denied unless it would create an emergency condition which cannot be prevented in any other manner.

§ 6. Alternative Holiday Schedules

Institutions of higher education and agencies requiring a seven-day, twenty-four hour operation may adopt alternative holiday schedules in keeping with operational needs, provided the employees are given the same number of holidays as approved by the State Human Resources Commission. Such special holiday schedules must be filed with the Office of State Human Resources.

§ 7. Additional Holiday Schedules

When the specific date of the legal holiday observance falls on Saturday or Sunday, agencies with a seven-day a week operation shall adopt an additional holiday schedule for employees regularly scheduled to work on the specific date of the legal holiday observance rather than the State public holiday.

Example: If July 4 falls on Saturday and Friday, July 3, is the State government legal holiday, the agency shall adopt, in addition to the State government public holiday schedule, a schedule that designates Saturday, July 4, instead of Friday, July 3, as the holiday for employee regularly scheduled to work on July 4.

Holidays Policy (cont.)

§ 8. Holiday Premium Pay

Employees who are required to work on designated holidays shall be given, in addition to regular salary, premium pay. **See Holiday Premium Pay Policy(Link)**

§ 9. Weekend Holidays

Unless a special schedule has been adopted by institutions of higher education and agencies with twenty-four hour operations, when a designated holiday falls on Saturday, the preceding Friday will be observed and when the holiday falls on Sunday, the following Monday will be observed.

§ 10. Workdays above 8 Hours

Where a workday greater than eight hours has been established, all hours above 8 shall be charged to vacation leave to equalize holiday benefits.

§ 11. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5), (5a)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .0900

§ 12. History of This Policy

Date	Version
July 12, 1954	• Holiday schedule approved on calendar year instead of fiscal year.
August 2, 1956	• The one-half day holiday granted for State Fair week discontinued.
January 1, 1970	• Started observing last Monday in May as Memorial Day (to be observed for the first time in 1971) instead of May 10 (Confederate Memorial Day) and changed Veterans' Day (November 11) to last Monday in October.
July 31, 1970	• Extended holidays to part-time employees if scheduled to work.
May 25, 1973	• Returned Veterans' Day back to November 11

Holidays Policy (cont.)

November 7, 1974	• Added paragraph relating to allowing employee to take off religious holidays of their choosing but the time would be charged to annual leave. • Required employee to charge leave (make up or deduct from pay) the one hour lost upon change to Daylight Savings time.
October 1, 1975	• Revised policy to recognize alternate holiday schedules for twenty-four hour operations.
January 7, 1976	• Temporary employees are not eligible for paid holidays.
December 1, 1976	• Approved the Friday after Thanksgiving as a holiday.
April 1, 1982	• Revised so that when a holiday falls on Saturday, Friday will be observed and when a holiday falls on Sunday, Monday will be observed. Previously it stated that when a holiday falls on Saturday or Sunday, Monday would be observed.
December 1, 1987	• Added Martin Luther King's Birthday; changed Easter Monday to Good Friday; established 2 days for Christmas (previously had 3 days when it fell during the week); and also added provision for "holiday exchange" for religious observances.
February 1, 1995	• Added back the 3rd day for Christmas when Christmas falls on Tues., Wed., Thurs. This goes through 2004.
April 1, 1995	• Clarified provisions for religious holidays.
August 1, 2003	• Revised to designate the holidays to be observed but omit the years so that when Christmas changes from 2 to 3 and vice versa, it will not require a rule/policy change. (Rule approved effective January 1, 2004.)
May 1, 2004	• Add paragraph on Eligibility for Holidays to clarify when employees receive holiday pay.
January 1, 2007	• (1) Added Note to clarify that employees who work less than 12 months only get holidays that occur during the months that they are scheduled to work. • (2) Clarified provisions for giving equal time off when an employee has to work on a holiday.

Holidays Policy (cont.)

October 1, 2007	• In the paragraph Holiday Premium Pay, added Advisory Note to state that in the BEACON HR/Payroll System, holiday compensatory time shall be given before any other leave/time (over-time compensatory time, on-call compensatory time and vacation or bonus leave).
July 1, 2009	• Revises Advisory Note to add gap hours compensatory time and travel compensatory time to leave hierarchy used in the BEACON HR/Payroll System.
August 21, 2013	• Session Law 2013-382 was ratified to amend G.S. 126-4(5) to allow 12 paid holidays per year including three paid holidays being given for Christmas regardless of what day of the week Christmas falls. Previously, State employees only received 12 paid holidays in years in which Christmas Day fell on Tuesday, Wednesday or Thursday.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointment types and career status.
February 4, 2021	• Policy reviewed by Total Rewards-Salary Administration Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on February 4, 2021.
April 1, 2021	• Policy reviewed by the Total Reward-Salary Administration Division to update the Policy by removing duplicative language available in another policy and alleviate confusion and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on April 1, 2021. • Deleted the “Holiday Premium Pay” description in the body of that section and add “For questions regarding Holiday Premium Pay refer to the Holiday Premium Pay Policy” with a link to the policy included.

Horizontal Transfer Policy

Contents:

§ 1. Horizontal Transfers

§ 1.1. Definition of Horizontal Transfer

A horizontal transfer is the movement of an employee from one position to another position within the same agency or between agencies when:

- there is no break in service, and
- the positions have the same salary grade or are in the same career-banded class.

§ 1.2. Application of This Definition to Changes Between Salary Grades

The Promotion Policy, rather than this Policy, applies when an employee changes from one pay grade to another pay grade with the same prefix, but a higher number (for example, from NC10 to NC11).

If an employee is changing between pay grades with different prefixes (for example, from NC10 to DT06), compare the salary range midpoints for the old pay grade and the new pay grade. If the new pay grade's midpoint is higher than the old pay grade's midpoint, the action is a promotion and governed by the Promotion Policy, rather than this Horizontal Transfer Policy.

This distinction between horizontal transfer and promotion will usually not result in a distinction in pay, because the same process – under the Pay Administration Policy – is

Horizontal Transfer Policy (cont.)

used to determine salaries under this Horizontal Transfer Policy and under the Promotion Policy.

§ 1.3. **Transfers Between Career-Banded Classifications and Graded Classifications**

Employees transferring from a career-banded classification to a graded classification or vice versa should be treated as a Grade-Band Transfer action, and the salary established using the Pay Administration Policy if transferring to a graded class or the Career Banding Salary Administration Policy if transferring to a banded class.

§ 1.4. **Break-in-Service Defined**

A break in service occurs when an employee is in nonpay status for more than thirty-one calendar days from the last day of work (except when on leave without pay).

Normally, a transfer between agencies results in an employee reporting to work in the receiving agency the first workday following the separation date from the releasing agency.

§ 2. Salary Rate

For transfers governed by this Policy, the salary must be set under the Pay Administration Policy. The salary may increase or decrease. A salary change on a horizontal transfer cannot create internal salary inequity. See the portion of the Pay Administration Policy on the equity pay factor for further details.[1]

When an employee transfers between banded classes, the salary shall be established based on consideration of all pay factors for career banding.

If there is a salary limitation due to budget restrictions or equity considerations, the announcement should include a separate recruitment range that specifies the maximum salary to be offered.

[1] The Administrative Code rule on horizontal transfers currently defines “internal salary inequity” as existing “when an employee's salary is 10 percent above or below” similarly situated employees. 25 NCAC 01D .0913(a). However, under federal and state law, there is no safe harbor for differences smaller than 10 percent. Indeed, there have been cases in the past where employers’ pay differences were held discriminatory in particular circumstances, even though those differences were smaller than 10 percent.

Horizontal Transfer Policy (cont.)

§ 3. Effective Date

If an employee reports to work the first workday following separation, the releasing agency shall carry the employee on its payroll through the day prior to the effective date of the transfer even though the separation date may fall on a non-workday.

An exception may be made when the releasing date falls on a non-workday at the first of the month, in which case the pickup should be made on the first day of the month. If other time is involved, such as holidays or approved vacation, the releasing agency and the receiving agency shall agree upon who will pay the employee.

§ 4. Overlap of Leave and Reemployment

It is the responsibility of both the releasing agency and the receiving agency to arrive at appropriate transfer dates and to transfer leave properly. If, however, the employee has been paid for unused vacation by the releasing agency after a separation which was apparently in "good faith," and not intended as a means of realizing compensation for accumulated vacation leave, and the employee is reemployed before the date through which vacation leave was paid, the payment for vacation leave shall not be considered as dual compensation.

§ 5. Benefits Transferred

When an employee transfers to another position that is subject to the State Human Resources Act ("SHRA"), all unused sick and vacation leave shall be transferred.

If the employee transfers to an exempt position in which leave will not be credited the same as employees subject to the State Human Resources Act, accumulated vacation and sick leave may be transferred subject to the receiving agency's approval. If vacation leave is not transferred, it shall be paid in a lump sum not to exceed 240 hours. Sick leave may be transferred and held for future use should the employee transfer back to a SHRA position.

§ 6. Qualifications

The employee must possess at least the minimum qualifications and competencies required for the class to which transfer is made.

Horizontal Transfer Policy (cont.)

§ 7. Personnel Records Transfer

The personnel file, as defined by statute and in the Personnel Records Policy, shall be transferred to the receiving agency.

§ 8. Leave With Pay for Transferred Employees

When management transfers an employee to serve the best interests of the State, the employee may be eligible for paid leave. These leave provisions are contained in the Transfer Leave Policy.

§ 9. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2),(5),(6)
- 25 NCAC 01D .0900

§ 10. History of This Policy

Date	Version
July 1, 1975	New policy on leave with pay for employees transferring.
January 1, 1976	Included provisions for competitive service positions.
June 1, 1985	Revised maximum distance factor from 20 to 35 miles or more to become eligible for consideration of reimbursement of moving expense.
December 1, 1985	Deleted provisions for competitive service.
August 1, 1986	Revised to allow exception for salary to be cut in case of insufficient funds or creation of a serious internal salary inequity.
January 1, 1990	Revised to conform to new pay plan. Added provision for transfer of employee personnel file when employee transfers to another agency.
December 1, 1995	Revised to state that the exception for paying a lower salary does not apply if an employee has RIF reemployment priority.
July 1, 2002	Revised to include advisory note regarding salary “waiver.”

Horizontal Transfer Policy (cont.)

July 1, 2005	Revised to eliminate “hiring rate” and to change “special entry rate” to “special minimum rate.”
July 1, 2006	Paragraph on Benefits Transferred revised to conform to changes in the Vacation and Sick Leave Policies.
January 1, 2007	(1) Changed title from “Transfer” to “Horizontal Transfer” to differentiate from redeployment and to clarify that this terminology is used only for transfers to the same grade. Transfers that involve a promotion are coded “Promotion,” etc. (2) Added provisions for career-banded classes. (3) Clarified transfer provisions for graded classes.
August 2, 2018	Edited to allow increases in the salary rate for Horizontal Transfer actions.
April 14, 2022 (effective June 1, 2022)	Changed to provide that salary increases should be considered under the procedures in the new Pay Administration Policy. Removed provisions that generally allowed salaries to only increase, not decrease, on a horizontal transfer. Removed provision that placed a 10% limit on any salary increase resulting from a horizontal transfer. Removed material on special minimum rates, as that process has been replaced in the new Pay Administration Policy. Moved material on geographic differentials to the new Geographic Differential Policy.

Hours of Work and Overtime Compensation Policy

Contents:

Hours of Work and Overtime Compensation Policy (cont.)

NOTE:

Effective February 19, 1985, the Supreme Court declared State and local governments subject to the Fair Labor Standards Act (FLSA). This policy is in accordance with that ruling.[1]

The salary thresholds for minimum wage and overtime pay requirements under the Fair Labor Standards Act have been updated to reflect changes in federal regulations effective July 1, 2024.[2] As of July 2024, these federal regulations are currently subject to multiple pending legal challenges. The thresholds will be adjusted to the previous levels if the legal challenges invalidate the regulations or delay their effective date for State of North Carolina employees.

§ 1. Minimum Wage

Employees shall be paid at least the Federal minimum wage, unless the North Carolina minimum wage is higher. Effective January 1, 2007, the North Carolina minimum wage is $6.15.[3] The federal minimum is $7.25 effective July 24, 2009.[4]

[1] Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). After the Garcia decision, the FLSA was amended to adjust how it applies to state employees. 99 Stat. 787 (Nov. 13, 1985).
[2] 89 Fed. Reg. 32842 (Apr. 26, 2024), modifying 29 C.F.R. § 541.600 to 541.607
[3] N.C.G.S. § 95-25.3
[4] 29 U.S.C. § 206

Hours of Work and Overtime Compensation Policy (cont.)

All of the approved salary rates published by the Office of State Human Resources provide more than the federal or state minimum wage to all employees certified for employment. The minimum annual state employee salary for employees whose salary is state funded and set by the Appropriations Act or pursuant to the North Carolina Hurman Resources Act is $31,200.[5] Under this policy, compliance with the required minimum wage should be automatic.

§ 2. Administration of Overtime

The payment of premium time and one-half rates in form of monetary compensation or time off is required for hours worked in excess of 40 within a week, with exception of those considered FLSA Not Subject.

Agency heads and supervisors shall hold hours worked by the employee to the State's established 40-hour workweek standard except in those cases where excessive hours of work are necessary because of weather conditions, necessary seasonal activity or emergencies. It shall be the responsibility of each agency or executive head to determine that the provision of overtime pay is administered in the best interest of the State. Although each agency head is responsible for the manner in which overtime is authorized, it is equally important to control unauthorized overtime. The practice of overtime work will be subject to review by the Office of State Human Resources. Such review will take into consideration organizational structure, scheduling of work, position complement, and personnel classifications.

§ 3. FLSA Not Subject Employees

Each agency HR Director or their designee will determine which employees are not subject to the hours of work and overtime pay standards under the terms of FLSA exemptions for positions within their classification delegated authority.

No employee whose position is designated as FLSA Not Subject overtime compensation provisions shall be paid in any way for hours worked in excess of forty in a workweek unless a specific exception has been (1) recommended in writing by the agency head in consultation with the agency's Human Resources Director, (2) submitted to OSHR,

[5] Session Law 2018-5, Senate Bill 99, Section 35.1.(a). For most full-time work schedules, this $31,200 minimum will be equivalent to an hourly wage of $15.

Hours of Work and Overtime Compensation Policy (cont.)

and (3) approved as an exception or variance by the State Human Resources Director under 25 NCAC 01A .0104. Agency heads can recommend payment of overtime compensation under this paragraph only for employees of their own agencies, not for employees of other agencies.

The reasons for the recommendation must be fully documented by the agency on the Pay/Leave Exception Request SmartSheet, which includes sample factors for agency heads and agency Human Resources staff to consider in these circumstances. Under this section:

(a) Agencies may seek to incentivize employees by authorizing payment of excess hours expected to be worked in the future.

or

(b) An agency may ask for retroactive compensation, authorizing payment of excess hours worked in the past. A retroactive request will be approved by OSHR only in extraordinary circumstances.

In either case, the agency's recommendation shall state a defined limit, defined time frame, and defined group of employees. In either situation (a) or (b) listed above, the Director will approve recommendations only if:

- They promote efficiency of administration for state services; and
- Are fair and reasonable in light of the state's overall system of personnel administration.

This shall not be construed to prohibit any agency from adopting and using a compensatory leave policy in accordance with the Compensatory Leave Policy.

The requirement for a written recommendation and approval by the State Human Resources Director under this section of this policy **shall not** apply to the section of this policy entitled "Overtime / Compensatory Time Off Option for Law Enforcement, Fire Protection and Emergency Response Personnel" (§ 25.8), but **shall** apply to approvals under the section of this policy entitled "Overtime Pay for FLSA Not Subject Employees When the Governor Declares an Emergency or a Disaster" (§ 25.9).

§ 4. Salary

The annual and monthly salary rates of an employee are established under current personnel policy for each position. This salary is to represent the employee's straight time pay for a standard 40-hour workweek.

Hours of Work and Overtime Compensation Policy (cont.)

§ 5. Overtime Compensation

For FLSA Subject employees whose regular work schedule is 40 hours per week, the employee shall receive straight-time pay for a standard 40-hour workweek, with the provision that:

- an additional amount equal to 1½ times the employee's regular hourly rate times the number of hours worked in excess of 40 shall be added to the base pay or,
- an employee shall be given compensatory time off equal to 1½ times the amount of time worked beyond 40 hours during a week.

The following provisions apply to Overtime Compensatory Time:

- Overtime compensatory time may be accumulated up to a maximum of 240 hours (160 hours straight time). Any overtime worked above this amount shall be paid in the employee's next regular paycheck.
- Overtime compensatory time off cannot be denied to an employee unless the compensatory time off will unduly disrupt agency operations.
- Overtime compensatory time shall be taken before any vacation or bonus leave. (Exceptions may be made for retirees who may need to exhaust vacation leave prior to retirement.)
- Agencies should allow overtime compensatory time to be taken as soon as possible.
- Overtime compensatory time shall be taken within twelve months from the date the work is performed. If not taken within 365 days, the time shall be paid out in the next paycheck.
- If an employee separates before taking overtime compensatory time, it shall be paid in a lump sum along with unused vacation.
- If an employee transfers to an FLSA Not Subject position or to another agency before taking overtime compensatory time, it shall be paid in the current or next regular pay period by the releasing agency.

NOTE: The preceding provisions are not applicable to persons in law enforcement or fire protection activities with a 28 day work period and in-residence employees. For provisions relating to those groups, see SPECIAL PROVISIONS section.

Hours of Work and Overtime Compensation Policy (cont.)

Prior to employment, each successful candidate for State employment in a position subject to hours of work and overtime pay standards must acknowledge that it has been explained that it is the State's policy to give time off in lieu of monetary compensation, wherever possible, for hours worked beyond 40 in a work week. Agreement to this is a condition of employment with the State; failure or refusal to sign or acknowledge such agreement will prevent employment of that person. This signed form or acknowledgement shall be a part of the employee's personnel file; it must be kept for at least three years following that person's separation from State employment.

§ 6. Pay Rate for Overtime Compensatory Time

Overtime compensatory time shall be paid at a rate of compensation not less than either the average regular rate received by such employee during the last three years of the employee's employment or the final regular rate received by such employee, whichever is higher.

§ 7. Overtime Hourly Rate of Pay

The hourly rate of pay is the rate published by the Office of State Human Resources and is obtained by dividing the annual salary by 2080 hours (52x40) for full time positions.

The rate that must be used in computing overtime is referred to as the regular hourly rate. The regular hourly rate must include all remuneration for employment paid to, or on behalf of, the employee, except payments specifically excluded by the Fair Labor Standards Act. Payments that are not excluded and must be included in the hourly rate are: (a) Shift Premium Pay, (b) Longevity Pay as explained below and (c) On-Call Compensation. These payments must be included in order to comply with the provisions of the Fair Labor Standards Act.

Longevity pay must be included in the regular rate when computing overtime.

Overtime for an employee working in two positions with different rates of pay is paid at the average of the two rates of pay for each position.

§ 8. Non-Overtime Workweeks

When an employee works 40 hours or less during a workweek because of vacation, holidays, or sick leave, the regular weekly salary is paid in accordance with established personnel policies.

Hours of Work and Overtime Compensation Policy (cont.)

§ 9. The Workweek

A workweek is a regularly recurring period of 168 consecutive hours. The workweek need not coincide with the calendar week. It may begin any day of the week and any hour of the day, but it must in each case be established in advance. The workweek may be changed, but only if the change is intended to be permanent and is not made to evade the overtime policy.

§ 10. Gap Hours

For permanent FLSA Subject employees whose regular work schedule is less than 40, gap hours are those hours that are caught in the gap between the maximum hours of work required to meet the work schedule and the overtime threshold. For example, if a permanent part-time employee is required to work 20 hours a week, the hours worked between 21 and 40 would be considered “gap hours.”

For permanent FLSA Subject law enforcement employees whose regular work schedule is 28 days, gap hours are those hours that are caught in the gap between 160 hours and 171 hours worked before overtime compensation begins.

Gap hours can also occur during a workweek when a permanent FLSA Subject employee takes a holiday, civil leave, or other management approved leave that is not offset by hours worked in the same workweek. Example, if a full-time employee has a holiday on Monday, but also works 40 hours in the same workweek as the holiday. The employee will receive 8 hours pay for the holiday, 32 hours regular straight-time pay, and 8 additional hours straight-time compensation.

§ 11. Gap Hours Compensation

Employees shall receive straight time pay for the gap hours worked with the provision that agencies will be given the option of providing cash payment or compensatory time for gap hours worked. The decision to pay cash versus compensatory time shall not be an employee decision. The agency head, or their designee, shall determine the best method of compensation for gap hours worked based on consideration of budget and organization needs of the agency. The decision to pay cash versus compensatory time should be applied consistently throughout an agency. The agency head shall report their compensation method to the Office of State Human Resources. Exceptions to the agency’s

Hours of Work and Overtime Compensation Policy (cont.)

chosen compensation method must be reviewed and approved by the Office of State Human Resources.

The following provisions apply to Gap Hours Compensatory Time:

- Gap hours compensatory time cannot be merged with overtime compensatory time or any other compensatory leave accounts.
- There is no maximum accumulation for gap hours compensatory time. Agencies may choose to pay out accumulated compensatory time at any time based on consideration of budget and organization needs.
- Gap hours compensatory time shall be taken before any vacation or bonus leave. (Exceptions may be made for retirees who may need to exhaust vacation leave prior to retirement.)
- Gap hours compensatory time shall be taken within twelve months from the date the work is performed. If not taken within 365 days, the time shall be paid out in the next paycheck.
- If an employee separates before taking gap hours compensatory time, it shall be paid in a lump sum along with unused vacation.
- If an employee transfers to an FLSA Not Subject position or to another agency before taking gap hours compensatory time, it shall be paid in the current or next regular paycheck by the releasing agency.

Note: Temporary FLSA Subject employees or other hourly FLSA Subject employees who are in a non-leave earning appointment type shall receive straight time monetary payment for a standard 40-hour workweek, and an additional amount equal to 1½ times the employee's regular hourly rate for all hours worked in excess of 40. Also, temporary FLSA Subject Law Enforcement employees with a 28 day work period shall receive straight time monetary payment for all hours worked up to and including 171 hours, and an additional amount equal to 1½ times the employee's regular hourly rate for all hours worked in excess of 171. There is no option to award overtime compensatory time or gap hours compensatory time for these temporary/hourly employees.

Hours of Work and Overtime Compensation Policy (cont.)

§ 12. Hours Worked

Generally, all time during which an employee is required, suffered, or permitted to be on the employer's premises on duty or at a prescribed work place, except for meals or other periods when the employee is free from duty, is considered as hours worked. This is so even if the duties are pleasurable rather than burdensome and even if no productive work is actually performed.

As a general rule, hours worked will include:

- all time during which an employee is required to be on duty on the employer's premises or at a prescribed workplace, and
- all time during which an employee is suffered or permitted to work whether or not required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the workday to the end with exception of periods when the employee is relieved of all duties for the purpose of eating meals.

§ 13. Unauthorized Work

Hours worked by an employee without the employer's permission or contrary to instructions may or may not be considered as hours worked. Unrecorded hours worked during a workweek by an employee at the job site or at home must be counted as hours worked if the employer knows or has reasons to know of such practice. The employer must enforce the no-work rule and may not unjustly benefit from work performed without knowledge of it. Unauthorized overtime may be addressed with the employee as a performance or conduct issue.

§ 14. Waiting Time

§ 14.1. On Call Waiting Time

Time spent by an employee who is required to remain on call on the employer's premises or so close thereto that the time cannot be used for the employee's own purposes is considered working time and must be compensated at the employee's regular rate of pay or overtime rate of pay. However, employees who are merely required to leave word as to

where they may be reached are not working while on call in this sense.[6] Time spent responding to a call received while on-call is time worked. See the **On-Call and Emergency Callback Pay Policy** for more information.

The fact that an employee lives on the employer's premises does not mean that the employee is entitled to pay for all those hours. Such an employee has regular duties to perform but is subject to work at any time in the event of an emergency. Ordinarily, employees have a normal night's sleep, ample eating time and may, during certain periods, come and go as the employee pleases.

An agreement should be reached with an employee in this category as to the extent of duty which will make clear the time that should be considered as hours worked and not worked. As a rule, allowance for 8 hours sleep and 3 hours for meal periods might be reasonable, plus any other hours that the employee may be free of unnecessary restrictions of use of the time. See Section 25.4 of this policy for additional information related to in-residence employees and Section 25.6 for additional information related to sleep time. See the **On-Call and Emergency Callback Pay Policy** for information pertaining to supplemental pay for which employees may be eligible for time spent on-call.

§ 14.2. On and Off Duty Waiting Time

Agencies may also need to consider whether any waiting time, including time spent on call, is time worked. An employee may be engaged to wait, or they may be waiting to be engaged. This determination must be made based on the facts and circumstances of each case, including the working agreement between the employer and the employee, the nature of the service being performed, and its relation to the waiting time. Time spent engaged to wait is time worked and time spent waiting to be engaged is not time worked.[7]

§ 15. Vacation, Sick Leave and Holidays

In determining the number of hours worked by an employee within a given week, time spent on vacation, sick leave, and holidays will not be counted as time worked. Such time off must be included in straight-time pay, but is not included in computing hours of work for overtime pay. See the **Leave Offsetting Policy** for additional information.

[6] 29 C.F.R. § 785.17
[7] See 29 C.F.R. § 785.14 to 785.16

Hours of Work and Overtime Compensation Policy (cont.)

§ 16. Rest Periods (Break Time)

A rest period of short duration, between 5 and 20 minutes, must be counted as hours worked.[8] It is at the discretion of the agency whether to allow break times for employees.[9] Unauthorized break time may be addressed as a performance or conduct issue.

See the **Work Schedule Policy** about the meal period that is part of the standard work schedule for full-time state employees, and about how employees should arrange meal periods in any variable work schedule with their supervisors.[10] As stated in the North Carolina Administrative Code and in the Work Schedule Policy, an FLSA Subject employee's hours worked do not include a bona fide meal period of at least 30 consecutive minutes during which an employee is completely relieved of duty. A meal period of less than 30 consecutive minutes must be considered as hours worked for employees who are FLSA Subject.[11]

§ 17. Meal Period

A bona fide meal period is a span of at least 30 consecutive minutes (never less) during which an employee is completely relieved of duty and free to use the time for his/her own purposes. It is not counted as hours worked or paid time. Any so-called "meal period" of less than 30 consecutive minutes must be paid as hours worked.[12]

§ 18. Grievance Time

The time an employee spends during a regular work schedule in addressing a grievance under the Employee Grievance Policy is work time.[13] See the **Other Management Approved Leave Policy** for information related to leave options for grievances. Such time spent outside the employee's regular work schedule is work time only if the employee's attendance is required by the agency or the State.

[8] 29 C.F.R. § 785.18
[9] The North Carolina Wage & Hour Act does not require mandatory rest breaks or meal breaks for employees 16 years of age or older.
[10] See Sections 2 and 3 of the **Work Schedule Policy**, along with 25 NCAC 01C .0502 and .0503.
[11] 25 NCAC 01C .0503(b).
[12] 29 C.F.R. § 785.19
[13] 29 C.F.R. § 785.42

Hours of Work and Overtime Compensation Policy (cont.)

§ 19. Training Time

Required attendance at training sessions, workshops, and other meetings, whether before, during or after the employee's regular work schedule, is work time.

Voluntary attendance at training sessions, workshops, and other meetings is not work time. Attendance is voluntary only if the employee is not led to believe that working conditions or continued employment would be adversely affected by nonattendance.

§ 20. Travel Time

Whether travel time is considered as hours worked depends on the circumstances and should be determined on a case-by-case basis.[14]

§ 20.1. Home To Work

An employee who travels from home before the regular workday and returns home at the end of the workday is engaged in ordinary home to work travel that is a normal incident of employment. This is true whether the employee works at a fixed location or at different job sites. Normal travel from home to work is not work time.[15]

§ 20.2. Travel That Is All In The Day's Work

Time spent by an employee in travel, as part of the employee's principal activity, such as travel from job site to job site during the workday, must be counted as hours worked.[16] When an employee is required to report at the employer's premises, or at a meeting place, to receive instructions or to perform other work there, the travel time from this designated place to the work place is part of the day's work and must be counted as hours worked.

If an employee normally finished work at a particular job site at 5:00 p.m., and is required to go to another job that is finished at 8:00 p.m., and is required to return to the employer's premises arriving at 9:00 p.m., all of the time is working time. However, if the employee goes home instead of returning to the employer's premises, the travel after 8:00 p.m. is home-to-work travel and is not hours worked.

[14] 29 C.F.R. § 785.33
[15] 29 C.F.R. § 785.35
[16] 29 C.F.R. § 785.38

Hours of Work and Overtime Compensation Policy (cont.)

§ 20.3. Home To Work On Special One-Day Assignments in Another City

When an employee who regularly works at a fixed location in one city is given a special one-day assignment in another city, such travel cannot be regarded as home-to-work travel. For example, an employee who works in Raleigh with regular working hours from 8:30 a.m. to 5:30 p.m., may be given a special assignment in another city, with instructions to leave Raleigh at 7:00 a.m. The employee arrives at 12 noon, ready for work. The special assignment is completed at 3:00 p.m., and the employee arrives back in Raleigh at 8:00 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the State's benefit and would, therefore, qualify as an integral part of the "principal" activity that the employee was hired to perform on that particular workday. All the time involved, however, need not be counted as work time. Since, except for the special assignment, the employee would have had to report to the regular work site, the travel between home and the airport, or the usual time required to travel from home to work may be deducted, such time being in the "home-to-work" category. Also, of course, the usual mealtime would be deductible.[17]

§ 20.4. Travel Away From Home Community

Travel that keeps an employee away from home overnight is travel away from home. Travel time away from home community is work time when it is within the employee's **regular working hours** on any day of the week. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Therefore, if an employee regularly works from 8:30 a.m. to 5:30 p.m., from Monday through Friday, the travel time during these hours is work time on Saturday and Sunday as well as the other days.[18] Regular meal period time is not counted.

That time spent in travel away from home **outside of regular working hours** as a passenger on airplane, train, bus, or automobile is not considered as work time, unless the employee is performing work.

If the employee **drives** the vehicle outside of regular working hours, the time spent driving the car is performing work and is counted as hours worked. (The same is true, if the

[17] 29 C.F.R. § 785.37
[18] 29 C.F.R. § 785.39

Hours of Work and Overtime Compensation Policy (cont.)

option was available, for the time that would have been spent had the employee used public transportation rather than driving their own vehicle.)

Time spent in travel as a **passenger outside of regular working hours, while the passenger was not performing other work duties,** is not time worked under the FLSA. Instead, employees should enter this time under code 9515, "Travel Time 1x," in the HR-Payroll System, which produces time off on a straight-time basis rather than a time-and-a-half basis. Code 9500 (for time worked) should instead be used if the passenger performed other work duties while traveling (such as completing paperwork or holding a work call) or if the travel was during regular working hours.

The example below will help explain the accountability for travel time away from home community.

Example:

Two employees who have headquarters in Raleigh and work on a Monday-Friday 8:30 a.m. to 5:30 p.m. schedule depart for Asheville on Sunday afternoon at 2:00 p.m., and arrive in Asheville at 7:00 p.m. During the travel, they are not performing any duties for work other than traveling.

- For both employees, the 3-1/2 hours traveled between 2:00 p.m. and 5:30 p.m., are hours worked, should be entered under code 9500 in the HR-Payroll System, and must be included in the total hours worked within the workweek. If the total hours worked exceeds 40 per week, the employee is to be compensated in accordance with the State's overtime time-off policy.
- For the passenger, the 1-1/2 hours traveled between 5:30 p.m. and 7:00 p.m. are not considered as time worked for the purpose of determining total hours worked. However, it shall be recorded as travel time and entered under code 9515, "Travel Time 1x," in the HR-Payroll System. This will produce any time off only on a straight-time basis.
- For the driver, the 1-1/2 hours traveled between 5:30 p.m. and 7:00 p.m. are considered time worked and should be entered under code 9500 in the HR-Payroll System.

Hours of Work and Overtime Compensation Policy (cont.)

FLSA Not Subject employees may be granted time off as a result of travel in accordance with the agency leave policy.

§ 20.5. Travel time for Hybrid (Part Time Telework), Full Time Telework Employees and Field/Home Based Employees Who Live Within a Reasonable Commute Distance

This section is for hybrid, teleworking, and field-based or home-based employees who live **within a reasonable commute distance**. The reasonable commute distance is defined by each agency; see the **Teleworking Program Policy**. For employees who are outside a reasonable commute distance, see the next section.

Generally, travel is not considered time worked when it is to and from a duty station for employees who live within a reasonable commute distance.[19] This is considered home to work travel (see Section 20.1).

However, travel time is considered time worked to the onsite duty station in the following scenario: the employee works from an alternate work location some or all of the time, and is required by the employer to come to the duty station on a day in which the employee was scheduled to telework, and the employee was not provided enough notice[20] to allow for travel to the onsite duty station before the beginning of their regular workday. (See Section 20.2.)

As an example, if an employee regularly teleworks on Tuesdays, and the employee is advised at 11:00am on Tuesday that they need to report to the office for an 11:30am in-person meeting, the time spent driving to the office will be considered time worked.[21]

Once the employee has reported to the duty station, travel time from the duty station to the alternate work site would not be considered time worked, regardless of when the

[19] Agencies should refer to the State Budget Manual and their agency travel reimbursement policy to determine when such travel should be reimbursed for field/home based employees. A hybrid or full time teleworker may not charge milage for travel between their place of residence and their duty station.
[20] For the purposes of this policy, “enough notice” means by the close of business the day before the employee is expected to report to the onsite duty station. This is only as it relates to travel time and hours worked and does not imply employees are expected to be able to rearrange medical appointments, transportation, and the like in order to report to an onsite duty station with this amount of notice.
[21] 29 C.F.R. § 785.38; 29 U.S.C. § 790.6

Hours of Work and Overtime Compensation Policy (cont.)

employee chooses to return to their alternate work site, as the employee has the ability to travel to the alternate work site at the end of their regular workday.

Travel time will not be considered time worked to and from a worksite that is required by the employer on a day in which the employee was scheduled to telework, but the employee was notified in advance of the need to report to the worksite such that the employee could arrange travel to and from the worksite before and after their regular workday. This is considered normal home to work travel (see Section 20.1). This is true even if the employee chooses to begin their workday at home and then report to the worksite during work hours.

§ 20.6. Travel time for Hybrid (Part Time Telework) , Full time Telework or Home/Field Based Employees that Live Outside of a Reasonable Commute Distance

This section is for hybrid, full time telework, and field-based or home-based employees who **live outside a reasonable commute distance**. The reasonable commute distance is defined by each agency; see the **Teleworking Program Policy**. For employees who are within a reasonable commute distance, see the previous section.

For employees who live outside a reasonable commute distance, generally travel time will be considered time worked if it would be considered time worked under the provisions of Sections 20.3 or 20.4 of this policy, whichever is most applicable to the specific employee.[22] The following paragraphs apply these provisions.

§ 20.6(a) Hybrid and Full Time Telework Employes

Hybrid and full time telework employees reporting to their onsite duty station, on a regularly scheduled day, that live outside of a reasonable commute distance (as defined by their agency telework policy) will not count travel from home to work time as time worked.[23] For example, a hybrid employee that lives 120 miles from their onsite duty station, who is expected to report to their onsite duty station every Wednesday will not count as time

[22] Agencies should refer to the State Budget Manual and their agency travel reimbursement policy to determine when such travel should be reimbursed for field/home based employees. A hybrid or full-time teleworker may not charge mileage for travel between their place of residence and their duty station.
[23] A hybrid or full time telework employee that lives outside of the reasonable commuting distance defined by their agency's telework policy should be a limited occurrence and an agency should provide advanced approval of such an arrangement. See Section 8 of the **Teleworking Program Policy**.

Hours of Work and Overtime Compensation Policy (cont.)

worked their travel from home to their duty station before their workday begins or their travel from their duty station to home after their workday ends.

Hybrid and full time telework employees who are requested to report to their onsite duty station **in addition to** the day(s) they typically or regularly report to their onsite duty station, who live outside of a reasonable commute distance as defined by their agency telework policy, will count the travel to and from the worksite as time worked under the provisions of Section 20.3 or 20.4 of this policy, whichever is most applicable. This means that the employee and Human Resources team need to look back at the provisions above about travel outside the home community to determine which portion of the travel would be time worked.

Full time telework employees that live outside of a reasonable commute distance as defined by the agency telework policy who do not have a regular on-site schedule will count travel time as time worked under the provisions of Section 20.3 or 20.4, whichever is most applicable to the employee.

§ 20.6(b) Home/Field Based Employees

Home/Field based employees that live outside of a reasonable commute distance as defined by the agency telework policy will count travel time as time worked under the provisions of Section 20.3 or 20.4, whichever is most applicable to the employee.

§ 21. Recordkeeping

Records of hours worked and wages paid are required to be kept for each employee subject to this policy. Each agency head is responsible for making available the following information for review by Federal and State auditors and the Office of State Human Resources. Records must be preserved for at least five years after the calendar year in which wages for services are paid[24].

- Name
- Home Address
- The state or states in which the individual performed services
- Date of Birth, if under 19
- Sex

[24] 04 NCAC 24D .0501

Hours of Work and Overtime Compensation Policy (cont.)

- Position classification in which employed
- Time and day of week the workweek or work period begins
- Total wages paid each pay period
- Date of payment and pay period covered
- Basis on which wages are paid (such as $10.00 hr., $400 wk., or $1600 a month)
- Regular hourly rate of pay for any work week or work period in which overtime is worked
- Amount and nature of each payment excluded from regular rate
- Dates on which the employee performed work
- Hours worked each workday and total hours worked each workweek or work period
- Total daily or weekly straight-time earnings or wages
- Total overtime earnings for the workweek
- Total additions to or deductions from wages paid each pay period plus the dates, amounts and nature of the items which make up the total additions and deductions
- Compensatory time accrued, used or paid

§ 22. Enforcement

The Secretary of Labor is authorized by the FLSA to sue for back wages and for an equal amount of liquidated damages without a written request from the employees even though the suit might involve issues of law that have not been finally settled by the courts.

The act also specifically authorizes suits against public employers by their employees. This amendment clarifies the right of State and local government employees to bring private actions in Federal and State courts against their employers to enforce their rights and recover any back wages that may be due under the Fair Labor Standards Act.

§ 23. Employees Not Subject to FLSA Overtime Rules

The FLSA Subject or FLSA Not Subject status of any particular employee must be determined on the basis of whether duties, responsibilities and salary meet the requirements for exemption. The employee's title or classification is of no significance in determining whether the tests are met.

It shall be the responsibility of the agency HR Director or their designee to determine whether the exemption is applicable to particular employees.

Hours of Work and Overtime Compensation Policy (cont.)

Following is an outline of the terms and definitions to be followed in determining those employees not subject to FLSA overtime rules.

§ 23.1. Executive Employee Exemption

To meet the executive exemption, an employee's position must meet the following requirements:

- primary duty is management of the enterprise or of a customarily recognized department or subdivision;
- customarily and regularly directs the work of two or more employees;
- has authority to hire or fire other employees or whose suggestions and recommendation as to hiring, firing, advancement, promotion or other change of status of other employees are given particular weight; and
- is paid at least $844 a week or $43,888 annually free and clear of board, lodging or other non-cash items.[25]

Primary Duty[26] - the principal, main, major, or most important duty that the employee performs. An employee's primary duty is determined by looking at all the facts, with the major emphasis on the character of the employee's job as a whole.

Important factors to consider when determining the primary duty include:

- the relative importance of the exempt duties as compared with other types of duties;
- the amount of time spent performing exempt work;
- the employee's relative freedom from direct supervision; and
- the relationship with the employee's salary and wages paid to other non-exempt workers for the same kind of nonexempt work.

Employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement. However, the regulations do not require that exempt employees spend more than 50% of their time performing exempt work.

Management[27] - Management includes activities related to supervising employees such as interviewing, selecting and training of employees; setting and adjusting pay rates and work hours; directing the work of employees; conducting performance appraisals, handling employee complaints and grievances; and disciplining employees. Other

[25] 29 C.F.R. § 541.100
[26] 29 C.F.R. § 541.700
[27] 29 C.F.R. § 541.102

Hours of Work and Overtime Compensation Policy (cont.)

management duties include planning and controlling the budget; monitoring or implement legal compliance measures; providing for the safety and security of employees or property; planning and apportioning work among employees; and other functions related to running or servicing a business.

A **"customarily recognized department or subdivision"**[28] must have a permanent status and continuing function. To meet this requirement, this does not include a mere collection of employees assigned from time to time to a specific job.

–**"Customarily and regularly"**[29] means a frequency that must be greater than occasional but which may be less than constant. As this relates to the supervision of other workers, this means that normally an exempt executive employee must direct the work of other employees at least once a week, but not every day.

"Two or more other employees"[30] means that the exempt manager must supervise two full-time employees or equivalent. The exempt executive generally must supervise other employees who work a total of 80 work hours.

An exempt executive employee must have "the authority to hire or fire other employees" or must have his or her suggestions and recommendations as to hiring, firing advancement, promotion or any other change of status be given "particular weight."

Particular weight[31] - Factors to consider when determining whether an employee's recommendation is given "particular weight" include, but are not limited to:

- whether it is part of the employee's job duties to make recommendations;
- the frequency with which recommendations are made or requested (does not include occasional suggestions); and
- the frequency with which the recommendations are relied upon.

Suggestions/recommendations may be reviewed by a higher-level manager. The exempt employee need not have authority to make the ultimate decision.

Concurrent Duties - Concurrent performance of exempt and nonexempt work does not automatically disqualify an employee from exemption.

- Not subject employees generally decide when to perform nonexempt duties and remain responsible for success or failure of business operations.

[28] 29 C.F.R. § 541.103
[29] 29 C.F.R. § 541.701
[30] 29 C.F.R. § 541.104
[31] 29 C.F.R. § 541.105

Hours of Work and Overtime Compensation Policy (cont.)

- Subject employees generally are directed by a supervisor to perform the exempt work or perform the exempt work for defined time periods

For example, an assistant manager can supervise employees, and serve customers at the same time without losing the exemption. In contrast, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because he occasionally has some responsibility for directing the work of other nonexempt production line employees when, for example, the exempt supervisor is on vacation.

§ 23.2. Administrative Employee Exemption

§ 23.2(a) General Exemption

To meet the administrative exemption, an employee's position must meet the following requirements:

- primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers;
- primary duty includes the exercise of discretion and independent judgment with respect to matters of significance; and
- is paid at least $844 a week or $43,888 annually free and clear of board, lodging or other non-cash items[32]

Primary Duty has the same meaning as defined in Section 23.1 of this policy.

Management or General Business Operations[33] - This refers to the type of work performed by the employee. To meet this requirement, the employee must perform work directly related to assisting with the running or servicing of the business. This includes but is not limited to, work in such areas as tax, finance, accounting, budgeting, auditing, insurance; quality control, purchasing; advertising, marketing; research, safety and health; human resources; public relations; legal and regulatory compliance; and similar activities.

[32] 29 C.F.R. § 541.200
[33] 29 C.F.R. § 541.201

Hours of Work and Overtime Compensation Policy (cont.)

Discretion and Independent Judgment[34] - Generally involves an employee comparing and evaluating possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, decisions and recommendations may be reviewed at a higher level and, upon occasion, revised or reversed. The term "matters of significance" refers to the level of importance or consequence of the work performed.

Discretion and independent judgment factors include but are not limited to whether the employee:

- has authority to formulate, affect, interpret, or implement management policies or operating practices;
- carries out major assignments in conducting the operations of the business;
- performs work that affects business operations to a substantial degree, even if the employee's assignments are related to the operation of a particular segment of the business;
- has the authority to commit the employer in matters that have significant financial impact;
- has the authority to waive or deviate from established policies and procedures without prior approval;
- has authority to negotiate and bind the company on significant matters;
- provides consultation or expert advice to management;
- is involved in planning long- or short-term business objectives;
- investigates and resolves matters of significance on behalf of management; and
- represents the company in handling complaints, arbitrating disputes or resolving grievances.

Discretion and independent judgment does not include applying well-established techniques, procedures or specific standards described in manuals or other sources; clerical or secretarial work; recording or tabulating data; or performing mechanical, repetitive, recurrent or routine work. Exempt employees may use manuals, guidelines or other established procedures if they contain or relate to highly technical, scientific, legal financial,

[34] 29 C.F.R. § 541.202

Hours of Work and Overtime Compensation Policy (cont.)

or other similar complex matters and they can be understood or interpreted by those with advanced or specialized knowledge and skills.[35]

Examples of employees that would meet the administrative exemption criteria[36]:

- an employee who leads a team of other employees assigned to complete major projects;
- an executive assistant or administrative assistant to a business owner or senior executive of a large business who has been delegated authority regarding matters of significance; or
- Human resources managers who formulate, interpret or implement employment policies;
- a management consultant who studies the operations of a business and proposes changes in organization.

Examples of subject positions include ordinary inspection work involving well established techniques and procedures; examiners and graders who perform work involving comparisons of products with established standards; and public sector inspectors or investigators.

§ 23.2(b) Educational Establishments Exemption[37]

- To meet the administrative exemption, an employee's position must meet the following requirements: Primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.
- is paid at least $844 a week or $43,888 annually free and clear of board, lodging or other non-cash items; or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed.

"Educational Establishment" means elementary or secondary school system, an institution of higher education or other educational institution. It also includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary or higher. Factors relevant in determining whether post-

[35] 29 C.F.R. § 541.704
[36] 29 C.F.R. § 541.203
[37] 29 C.F.R. § 541.204

Hours of Work and Overtime Compensation Policy (cont.)

secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools.

"Performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.[38]

§ 23.3. Professional Employee Exemption

§ 23.3(a) Learned Professional[39]

To meet the Learned Professional exemption, an employee's position must meet the following requirements:

- primary duty must be performance of work requiring advanced knowledge;
- is in a field of science or learning;
- customarily acquired by a prolonged course of specialized intellectual instruction; and
- is paid at least $844 a week or $43,888 annually free and clear of board, lodging or other non-cash items. (Exception: The salary level and salary basis tests do not apply to doctors, lawyers, and teachers.)

"Work requiring Advanced Knowledge - means work that is predominately intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment. An exempt professional employee uses advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. It is not work involving routine mental, manual, mechanical, or physical work. Advanced knowledge cannot be attained at the high school level.

"Fields of science of learning" are occupations with recognized professional status. Fields of science or learning include law, theology, medicine, pharmacy, accounting, teaching, architecture, engineering, actuarial computation, and the physical, chemical or biological sciences.

[38] See 29 C.F.R. § 541.204 (c)(1) and (2) for examples of positions that may qualify for this exemption.
[39] 29 C.F.R. § 541.301

Hours of Work and Overtime Compensation Policy (cont.)

"**Prolonged course of specialized intellectual instruction**" means that the learned professional exemption is limited to professions where specialized, academic training is a standard prerequisite for entering the profession. The best evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the Exemption is also available to employees in such professions who possess substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attain the advanced knowledge though a combination of work experience and intellectual instruction.

This exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field; with knowledge acquired through an apprenticeship; or with training in the performance of routine mental, manual, mechanical or physical processes.

Occupations generally meeting the learned professional exemption include doctors[40], nurses, physician assistants, dental hygienists, registered or certified medical technologists, lawyers[41], paralegals, teachers[42], architects, engineers, pharmacists, chefs, and actuaries.

In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (*see* § 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (*see* § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (*see* § 541.304).

§ 23.3(b) Creative Professional Exemption[43]

To meet the creative professional exemption, the employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

The recognized fields of artistic or creative endeavor include music, writing, acting and the graphic arts. Exempt creative professionals include musicians, composers, conductors, novelists, screenwriters, actors, painters, and photographers.

[40] See 29 C.F.R. § 541.304 for more information related to exemptions due to the practice of medicine.
[41] See 29 C.F.R. § 541.304 for more information related to exemptions due to the practice of law.
[42] See 29 C.F.R. § 541.303 for more information.
[43] 29 C.F.R. § 541.302

Hours of Work and Overtime Compensation Policy (cont.)

The requirement of "invention, imagination, originality of talent" distinguishes the creative professions from work that primarily depends on intelligence, diligence, and accuracy. The determination of exempt creative professional status must be made on a case-by-case basis, based on the extent of the invention, imagination, originality, or talent exercised by the employee.

§ 23.4. Computer Employee Exemption[44]

To qualify for the computer employee exemption an employee's position must meet the following requirements:

- is compensated either on a salary or fee basis at a rate not less than $844 a week or, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- is employed as a computer system analyst, computer programmer, software engineer or other similar skilled worker in the computer field and
- The employee's primary duties consist of:
  (1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  (2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  (3) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
  (4) a combination of the aforementioned duties, the performance of which requires the same level of skills.

The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computers systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.

[44] 29 C.F.R. § 541.400

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§ 23.5. Highly Compensated Employee Test

An employee must meet the following criteria to meet the highly compensated test exemption:

- total annual compensation is at least $132,964;
- is paid at least $844 per week on a salary or fee basis;
- performs office or non-manual work; and
- customarily and regularly performs any one or more of the exempt duties identified in the standard tests for the executive, administrative or professional exemptions.

Total annual compensation does not include credit for board lodging or other facilities, payments for medical or life insurance, and contributions to retirement plans or other fringe benefits. Tasks or work performed “customarily and regularly” include work normally and recurrently performed every workweek. If a highly compensated “white collar” employee customarily and regularly performs one or more exempt duties, detailed analysis of all the job duties performed is not necessary. For example, an employee may qualify as a highly compensated executive employee if the employee meets the total annual compensation amount and customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

§ 23.6. Combination Exemptions[45]

Employees who perform a combination of exempt duties as set forth in the regulations in this part for executive, administrative, professional, outside sales and computer employees may qualify for exemption. Thus, for example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption. In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.

§ 24. First Responders Generally Subject to FLSA

Police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue

[45] 29 C.F.R. § 541.708.

workers, hazardous materials workers and similar employees ("first responders") who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims, preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected an convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects preparing investigative reports; and other similar work are not exempt under Section 13 (a) (1) of the Act and thus are protected by the minimum wage and overtime provisions of the FLSA.[46]

First responders generally do not qualify as exempt employees because their primary duty is not management. They are not exempt administrative employees because their primary duty is not the performance of office or non-manual work directly related to the to management or general business operations of the employer or their employer's customers. They are not exempt learned professionals because their primary duty is not the performance of work requiring knowledge of an advance type in a field or learning customarily acquired by a prolonged course of specialized intellectual instruction. Although some first responders have college degrees, a specialized academic degree is not a standard prerequisite for employment.

§ 25. Special Provisions

§ 25.1. Child Labor

The Fair Labor Standards Act sets 14 as the minimum age for most non-agricultural types of work but limits the number of hours that may be worked for minors under age 16. It also prohibits minors under age 18 from working in any occupation that is deemed to be hazardous. Of particular interest to all agencies are Hazardous Occupations Orders prohibiting the employment of minors between 16 and 18 years of age such as motor vehicle drivers and helpers, operators of elevators and in occupations involving the operation of certain power-driven woodworking and bakery machines.[47]

[46] 29 C.F.R. § 541.3
[47] See 29 C.F.R. Subpart E for more information.

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Agencies should review the Child Labor provisions in the FLSA if questions of minimum age arise.

(Website: http://www.dol.gov/dol/topic/youthlabor/agerequirements.htm)

The FLSA provides for a civil penalty of up to $1,000 for each violation of the child labor provisions of the Fair Labor Standards Act.

Minors will be paid the same rate of pay as other employees doing similar type work, including overtime premium pay for hours worked in excess of 40 per week. The only exception is for agriculture workers as explained below.

§ 25.2. Agriculture Workers[48]

The FLSA exempts agricultural employees from overtime compensation, however it is State policy that hours of work for these employees are highly variable during seasonal periods and the hours worked may be averaged over a 12-month period but shall not exceed 2080 hours. Upon leaving State service, an agricultural employee shall be paid for any accumulated overtime balance remaining in the time records.

Agricultural workers are defined as workers who cultivate the soil or grow or harvest crops, workers engaged in dairying, or who raise livestock, bees, poultry or perform closely related research.

§ 25.3. Student Workers

The employment of students by the institutions in which they are enrolled is designed primarily to constitute one type of student financial aid. Such employment usually is characterized by flexible accommodation of the student's primary involvement in educational pursuits. Thus, in terms of hours worked, scheduling of work, and required skill and productivity, such student workers are materially distinguishable from regular career employees. Student workers are generally subject to FLSA and do not work more than 40 hours per week.

Any person who during any period of enrollment as a student in a public educational institution concurrently is employed by that institution shall be considered an employee within the meaning of and subject to the State Human Resources Act only if the student

[48] See 29 C.F.R. Part 780 for more information.

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employee is employed by the institution on a full-time permanent basis (as defined by regulations issued by or under the authority of the State Human Resources Commission) in a permanent position established and governed pursuant to requirements of the State Human Resources Commission.

§ 25.4. In-Residence Employment

Employees who reside on, or spend a substantial amount of time on the premises, are usually on duty or subject to call at all times except when the dormitory is closed. It may be necessary for these employees to be required to work irregular schedules on a 5, 6, or 7-day workweek. Where this type of employment arrangement is necessary, the hours of work and overtime procedures must be established so as to accommodate work requirements.

While it will be difficult to determine the exact number of hours worked by such employees, it is permissible, under ruling of the Wage and Hour Division, to arrive at a reasonable agreement with the employees as to what constitutes the normal number of hours worked during a given workweek, taking into consideration the time they engage in private pursuits such as eating, sleeping, entertaining and the time they are able to be away from the dormitory for personal reasons[49]. The following basis of pay may be adopted for employees in such categories:

Salary - The annual salary and monthly salary rates of an employee are established under current personnel policy for each position to which the appointment is made. With the employee's agreement, this salary is to represent the employee's straight-time pay for the agreed upon normal number of hours on duty per week. The hourly rate of pay is to be determined by dividing the stated annual salary by 52 to obtain the weekly salary and dividing this amount by 40 to obtain the hourly rate.

Overtime Compensation - Under this plan it is anticipated that weekly schedules will fluctuate and workweek schedules will be provided on a 40-45, 55, etc. basis. The employee is to receive straight-time pay for the established workweek with the proviso that where the agreed upon workweek exceeds 40 hours an additional amount equal to one-half of the hourly rate times the number of hours in excess of 40 will be added to the base pay. When it is necessary to work in excess of the agreed upon workweek hours, the employees will be

[49] 29 C.F.R. § 785.23

paid time and one-half the hourly rate for all hours worked in excess of the normal workweek.

§ 25.5. Registered Nurses

There are work units in State government where the presence of one or more Registered Nurses is required at all times. Due to emergencies or to labor market shortages, occasions occur when Registered Nurses are required to work additional hours in excess of their regular weekly schedule.

When it is necessary for an employee in a professional nursing class to work more than a regularly scheduled 40-hour workweek the excess hours shall be subject to hours of work and overtime compensation. When possible, the compensation should be in the form of time off. When the person in the position normally has twenty-four hours responsibility, (as in the case of some supervisors and most directors), overtime compensation provisions shall not be applicable, if the employee is not subject to the FLSA. If the employee with a shift of 24 hours or more is subject to the FLSA, refer to Section 25.6 of this policy.

In instances where it is not possible to pay an FLSA Subject employee overtime compensation in the form of compensatory time off, the overtime premium pay will be based on the employee's regular hourly rate of pay, except in cases where an employee may be assigned duties at a lower classification level; in such cases the base rate of pay may not exceed the maximum rate of the lower level assignment.

§ 25.6. Sleep Time[50]

Under the FLSA, there are some instances in which a sleep period may be excluded from hours worked and some in which it may not.

When an employee is required to be on duty for less than 24 hours **and has been expressly permitted by the agency** to sleep or engage in other personal activities when not busy during the on-duty period, the permitted sleep time may not be excluded from compensable hours of work.[51]

[50] See 29 C.F.R. § 785.21, § 785.22 and § 553.222
[51] 29 C.F.R. § 785.21. For law enforcement or fire protection personnel with 28 day work periods, sleep time may only be excluded on shifts of **more than** 24 hours. Sleep time may not be excluded on shifts of exactly 24 hours or less than 24 hours. 29 C.F.R. § 553.222

Where an employee is required to be on duty for 24 hours or more,[52] the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep.

If the sleeping period is of more than 8 hours, only 8 hours will be credited, and unless an expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and meal periods constitute hours worked.

If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. If the employee cannot get at least 5 hours' sleep during the scheduled period, the entire time is working time.

§ 25.7. Law Enforcement Activities[53]

The term law enforcement activities refers to any employee (1) who is a uniformed or plainclothes member of a body of officers and subordinates who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property form accidental or willful injury, and to prevent and detect crimes, (2) who has the power of arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics. Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as “probationary” or “permanent” employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities.

The term “employees in law enforcement activities” also includes “security personnel in correctional institutions”. This includes any government facility maintained as part of a

[52] Examples in the federal regulations of those “on duty” in this way include telephone operators who were given a sleeping bunk (in the text of 29 C.F.R. § 785.21), police officers on a tour of duty (in the text of 29 C.F.R. § 553.222), and firefighters (in the cases cited in 29 C.F.R. § 785.22).
[53] 29 C.F.R. § 553.211

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penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories. Employees of correctional institutions who qualify are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank. Law enforcement employees may include, for example, fish and game wardens or criminal investigative agents assigned to the attorney general's staff or any other law enforcement agency concerned with keeping public peace and order and protecting life and property.

Not included in the term "employee in law enforcement activities" are the so-called "civilian" employees of law enforcement agencies or correctional institutions that engage in such support activities as those performed by dispatchers, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks, and stenographers. Nor does the term include correctional program assistants, directors or supervisors or employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties, or may be required by statute or regulation to be certified by the Criminal Justice Training and Standards Council.

Because of the varied nature of law enforcement activities throughout the State, it may not be possible for all law enforcement classifications to be considered under the same plans for overtime. Under the Wage and Hour Law two options are permissible

(1) For schedules requiring a 40-hour workweek, the policies on hours of work and overtime pay for a 40-hour workweek will apply.

(2) For schedules requiring more than 40 hours in a workweek the following is permissible. The "work period" will consist of 28 consecutive days. In the workweek period of 28 consecutive days the employee shall receive, for tours of duty, which in the aggregate exceed 171 hours, compensation at a rate of one

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and one-half times the regular hourly rate at which employed.[54] (The regular hourly rate is the rate computed on a 40-hour basis and published in the Salary Plan by the Office of State Human Resources, plus shift premium pay, if any.)

See the "Gap Hours" section of this policy for provisions on how to compensate for hours worked between 160 and 171.

§ 25.8. Overtime / Compensatory Time Off Option for Law Enforcement, Fire Protection and Emergency Response Personnel with a Work Period of 28 Days[55]

The following provisions are applicable only to agencies that employ persons in subject law enforcement/fire protection/emergency response positions. Such agencies may, by letter to the State Human Resources Director, choose to use the following overtime compensation provisions in lieu of the customary overtime compensation provisions elsewhere in this policy:

(1) Under these provisions, FLSA Subject persons in law enforcement/fire protection/emergency response positions who work more than 171 hours for law enforcement employees or 212 hours for fire protection employees in a 28 consecutive day work period may be given compensatory time off in lieu of cash payment for these overtime hours worked.

(2) Overtime compensatory time off earned must be used no later than 180 days from the date the compensatory time off was earned.

(3) Overtime compensatory time off earned but not used within 180 days from its being earned must be paid for in cash in the first pay period following the expiration of the 180 days.

(4) Overtime earned under these provisions must be compensated at the rate of one and one-half time the regular hourly rate or one and one-half hours of compensatory time off for each hour of overtime earned.

(5) If an employee under these provisions has a positive balance of earned overtime compensatory time off and is promoted to an exempt position, the accumulation of earned compensatory time off must be paid in cash before the employee goes into the exempt position.

[54] 29 C.F.R. 553. § 201
[55] See 29 C.F.R. § 553.230-233

(6) Employees in these positions cannot accumulate more than 480 hours of compensatory time. Any compensatory time earned in excess of 480 hours must be paid in cash as earned.

When an agency chooses the time off provisions in a letter under this section of the policy, it does not require any additional approval by the State Human Resources Director, and it shall not require approval of an exception or variance as described in § 3 of this policy.

The subject or not subject status of law enforcement personnel will be determined under the terms of exemptions for Executive, Administrative and Professional employees.

Employees engaged in law enforcement activities may also engage in some non-law enforcement work as an incident to or in conjunction with their law enforcement activities. The performance of such work will not cause the employee to lose law enforcement status unless such work exceeds twenty percent of the total hours worked by that employee during the workweek or the applicable work period. A person who spends more than twenty percent of their working time in non-law enforcement activities shall not be considered as being engaged in law enforcement activities for coverage under this subsection of policy.[56]

§ 25.9. Overtime Pay for FLSA Not Subject Employees When the Governor Declares an Emergency or a Disaster

Agencies are authorized to pay overtime (1) at time and one-half for FLSA Subject employees and (2) at straight-time rates to FLSA Not Subject employees when all of the following conditions occur:

- There is a gubernatorial declaration of a state of emergency/disaster;
- Employees are performing law enforcement activities or response/recovery activities during the emergency/disaster;
- There is a requirement by management for employees to work overtime during the emergency/disaster; and
- Funds are available. The agency shall determine if funds are available and obtain prior approval from the Office of State Budget and Management to use such funds to cover the overtime payments. The agency shall distribute any overtime pay consistently with a pre-defined standard that treats all employees equitably.

[56] 29 C.F.R. § 553.212

Hours of Work and Overtime Compensation Policy (cont.)

This authorization requires a written recommendation and approval by the State Human Resources Director under § 3 of this policy.

The absence of any of these conditions will require the agency to follow (1) the Hours of Work and Overtime Policy for FLSA Subject employees and (2) the agency's compensatory leave policy for FLSA Not Subject employees.

§ 25.10. Tour of Duty and Compensable Hours of Work[57]

The term “tour of duty” is a unique concept applicable only to employees in law enforcement and fire protection activities. This term means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Scheduled periods also include time spent in work outside the “shift” which the public agency employer assigns. Unscheduled periods include time spent in court by officers, time spent handling emergency situations and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance. The tour of duty does not include time spent substituting for other employees by mutual agreement as set out elsewhere in this policy. The tour of duty also does not include time spent in volunteer law enforcement and fire protection activities performed for a different jurisdiction.

§ 25.11. Occasional or Sporadic Employment in a Different Capacity[58]

Where employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime compensation under this policy.

“Occasional or Sporadic” - The term “occasional or sporadic” means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of services which is at times best met by the part-time employment of an individual who is already employed by the State. Where employees freely and solely at their own option enter into such activity, the total hours

[57] 29 C.F.R. § 553.220
[58] 29 C.F.R. § 553.30

worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

In order for hours of such work not to be combined with hours worked on the primary, regular job, the employee's decision to work in a different capacity must be made freely and without coercion. The employee's decision to perform such work will be considered to have been made at their sole option when it has been made without fear of reprisal or promise of reward.

Typically, recreation and park facilities, university athletic facilities or other public events may need to utilize employees in occasional or sporadic work. Employment in such activity may be considered occasional or sporadic for regular State employees even when the need for such work can be anticipated because it recurs seasonally (the State Fair, for example).

In order to be "occasional or sporadic" it is essential that the character of the activity be intermittent and irregular, rather than continuous or regular.

In order for employment in these occasional or sporadic activities not be considered subject to the overtime provisions of this policy, the regular State employment of the individual must also be in a different capacity; that is, it must not fall within the same general occupational category.

§ 25.12. Substitution[59]

Two persons employed by the same agency may agree, solely at their option and with the approval of the agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked in a substituting capacity shall be excluded from the calculation of hours for which the substituting employee is entitled to overtime compensation under this policy. This provision will apply only if the employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An agency may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each

[59] 29 C.F.R. § 553.31

employee must be free to refuse to perform such work without sanction, and without being required to explain or justify that decision. Such a decision will be considered voluntary when it has been made without fear of reprisal or promise of reward and for the employee's convenience, rather than the convenience of the agency.

Agencies whose employees engage in substitute work under this provision are not required to keep a record of the hours of the substitute work. There is also no limit on the period of time during which hours worked may be traded or paid back among employees. Any agreement between employees to substitute for one another at their own option must be approved by the agency; this approval must be prior to the substitution and the agency must know what work is being done, who is doing the work, and when and where the work is being done. The type of approval (formal, informal, oral, written or otherwise) is left to the decision of the agency.

§ 25.13. Volunteers

State policy does not recognize volunteer work as creating an employer-employee relationship so as to require coverage under wage and hour and overtime compensation standards. The following provisions are intended to provide guidance in determining whether service performed is voluntary, thus exempt from treatment under this policy.[60]

A volunteer is one who performs hours of service for a State agency for civic, charitable or humanitarian reasons without promise or expectation of compensation for services provided.[61] Service provided by a volunteer is not subject to the provisions of this policy. However, an individual shall not be considered a volunteer if the person is otherwise employed by the same agency to perform the same type of services as those for which the person proposes to volunteer.[62] Volunteers may receive expenses, reasonable benefits, a nominal fee, or any combination thereof without losing their status.[63]

[60] Employees within the first six months of their retirement period should ensure any volunteer work allows the employee to continue to meet the definition of retirement in N.C.G.S. 135-1(20).
[61] 29 C.F.R. § 553.101(a)
[62] 29 C.F.R. § 553.101(d), § 553.102. § 553.103
[63] 29 C.F.R. § 553.106(a)

Hours of Work and Overtime Compensation Policy (cont.)

§ 26. Sources of Authority

This policy is issued under the following source of law:

- N.C.G.S. § 126-4(2), which authorizes policies governing "[c]ompensation plans … for all employees subject to the provisions of this Chapter."

It is compliant with:

- The Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
- The North Carolina Wage and Hour Act, N.C.G.S. § 95-25.1 et seq., to the extent that Act applies to state governments under G.S. § 95-25.14(d).
- The Administrative Code rules at 25 NCAC 01D .1900 et seq.

§ 27. History of This Policy

Date	Version
November 3,1965	No overtime work with pay is allowable. Compensatory time off may be permitted for overtime worked at the request of the appointing authority.
February 1, 1967	Fair Labor Standards Act of 1938 amended by Congress in October,1966, extended to colleges, universities, schools and hospitals.
March 3, 1967	Revised policy statement due to amended Federal Fair Labor Standards Act – "The basic policy of the State, that no monetary compensation is authorized for overtime work, will remain in effect for all positions not covered by the amendments to the Federal statute." "Although the Federal Act provides that overtime is paid for hours worked in excess of 44 per week, the State's policy is to pay overtime at standard rates for hours in excess of 40. Since the State has adopted a 40-hour workweek, it is more in keeping with our past policies in personnel management to continue the 40-hour workweek rather than extend the standard hours per week to 44." "It is the policy of the State that overtime work be held to a minimum consistent with the needs and requirements of sound and orderly administration of

Hours of Work and Overtime Compensation Policy (cont.)

	State government." "It is the policy of the State to reduce cost by providing compensable time off whenever possible."
February 1968	Approved a plan of paying overtime in those agencies not subject to the Fair Labor Standards Act in order to provide equal treatment to all employees.
October 1, 1971	Amendment to hours of work and overtime compensation to meet Federal minimum wage for state employees under the Personnel Act who are employed at Universities, college schools and hospitals. They are subject to the minimum wage and time and one half overtime for hours worked in excess of 40 a week. Also amendments for employees not covered by the Federal law in regard to minimum wage, overtime compensation, etc.
February 1, 1972	General provisions of Federal Wage and Hour applied to all employees as a matter of Commission policy.
May 1, 1974	Federal Wage and Hour Law was made applicable to all State employees.
January 1, 1975	Special provisions for fireman and law enforcement.
May 1, 1975	Supreme Court ruled 1966 and 1974 amendments to Wage and Hour Law unconstitutional. Provisions adopted by Commission will still apply.
February 1, 1977	Provided different employment arrangement for Houseparents who are employed in the care of children in our four schools for the blind or the deaf as regarding Hours of Work and Overtime Compensation.
February 1, 1978	Added provision that make-up time because of adverse weather would not be considered as work time in computing overtime.
March 17, 1978	Overtime pay for Highway Patrolmen - Pay all Highway Patrolmen overtime pay for all hours worked in the Federally-funded Highway Safety Project Grant under Section 402c of Public Law 89-564, entitled "55 MPH SPEED AND DWI ENFORCEMENT SELECTIVE ENFORCEMENT". This is considered as an exception to the policy and not as an amendment to the policy.
August 1, 1978	Overtime for SBI.

Hours of Work and Overtime Compensation Policy (cont.)

October 1, 1978	Exception to Overtime Policy - Seasonal and Emergency Operations - DOT.Employees to receive straight-time pay for standard 40 hour workweek, hours worked in excess of 40 but not to exceed 50 hours per week will be compensated for by granting time off on an hour and one-half for hour basis. Compensatory time off will be given at the convenience of the agency, taking into consideration work curtailment due to weather conditions.
May 1,1979	Special provisions for registered nurses.
January 1, 1982	Overtime pay for Forest Firefighters.
October 1, 1982	Overtime compensation for NRCD seasonal employee.
August 1, 1984	SBI Overtime policy.
February 19, 1985	Supreme Court declared State and local governments subject to the Fair Labor Standards Act.
April 15, 1986	Policy changed to conform to legislation. Revised provisions in Adverse Leave policy to not allow time to result in overtime.
September 1, 1989	Clarified that FLSA exempt employees are not eligible for overtime pay.
March 1, 1994	Changed “pay period” to “calendar month” for giving compensatory time.
December 1, 1995	Revised to allow compensatory time to accumulate up to a maximum of 240 hours and taken off within twelve months instead of within 30 days. Must be paid at end of 12 months if not taken.
September 1, 1997	Policy arranged in new format.
N/A	Memorandum, State Personnel Manual Changes – Revision No. 4, dated 3-17-2000 advised: “This revision of pages 4-203 through 4-106 represents a correction only. The third paragraph on page 104 has been deleted since this is an outdated provision and should have been deleted before the Manual was published. Some of the wording was omitted in the last sentence on page 105. This has been corrected.
December 13, 2001	A special provision added to allow agencies to pay FLSA exempt employees overtime at straight-time rates when there is a gubernatorial declaration of a state of emergency.

Hours of Work and Overtime Compensation Policy (cont.)

December 1, 2002	Under On-Call, first paragraph, last sentence, corrected the "work" to "word."
March 1, 2003	Correction of wording gin item No. (2) under Overtime/Comp Time Off Option.
August 23, 2004	Incorporates changes to the Fair Labor Standards Act.
September 1, 2006	Clarified that if an employee is retiring, compensatory time may be paid in a lump sum rather than exhausted.
January 1, 2007	Revised to include North Carolina's new minimum wage of $6/15
July 24, 2007	Under Minimum Wage, changed the Federal minimum to $5.85 effective July 24, 2007.
October 1, 2007	Under the paragraph Compensation: a) Deleted sentence stating that overtime worked shall be recorded and compensated in units of one-tenths of an hour b) Added Advisory Note stating that before generating compensatory time, the BEACON HR/Payroll System will use hours worked in excess of the employee's established work schedule to: • pay back advanced leave liabilities owed to the State, • pay back adverse weather liabilities owed to the State, and • offset paid leave hours reported in the same overtime period.
July 24, 2008	Revised to reflect the change in the Federal minimum wage from $5.85 to $6.55.
July 1, 2009	(1) Revises minimum wage to $7.25 effective July 24, 2009. (2) Adds provisions for "gap hours" – the hours that are in between the maximum hours of work required to meet the work schedule and the overtime threshold.
September 7, 2017	Additional changes.
August 7, 2023 (effective October 1, 2023)	Added detail to explain precisely how an agency may be approved to pay out compensatory time to employees who are exempt from the Fair Labor Standards Act. Matching existing practice: • State Human Resources Director approval is not required when an agency chooses an option involving compensatory time payout for

Hours of Work and Overtime Compensation Policy (cont.)

	law enforcement, fire protection, or emergency response positions. See § 29.7 of the Policy. • An agency head recommendation and State Human Resources Director approval, under the exception/variance process set out in the Administrative Code, is required for all other payouts of compensatory time to positions that are designated as exempt from overtime compensation provisions. See §§ 3 and 29.8 of the Policy. Also added "Source of Authority" section to policy and placed policy history in the policy's text.
November 30, 2023	• Added a Note at the beginning of the policy to explain these revisions are the first of two parts. • Updated Section 1, Minimum Wage: o Added a footnote that cites to the North Carolina Wage and Hour Act Minimum Wage. o Added information on the state employee minimum annual salary of $31,200, including a footnote referencing its implementation by Session Law 2018-5. • Updated FLSA Exempt employee minimum salary to reflect $684 per week or $35,568 annually in Sections 23 (Executive Employee Exemption), 24 (Administrative Employee Exemption), and 25 (Professional Employee Exemption). • Updated the FLSA Computer Employee Exemption minimum salary to reflect $684 per week. • Updated the FLSA Highly Compensated employee exemption to reflect a minimum annual compensation of $107,432 and $684 per week.
July 11, 2024	Generally, updated the policy to better reflect the Fair Labor Standards Act (the "FLSA") and associated federal regulations. In this revision, the major changes to the policy include the following.

Hours of Work and Overtime Compensation Policy (cont.)

	• The threshold salary for FLSA exemptions has been updated to match 89 Fed. Reg. 32842 (Apr. 26, 2024). The effective date of the new federal rule is July 1, 2024.
	• To reduce confusion with the concept of being "exempt" from the State Human Resources Act, text about being exempt from or subject to the FLSA has been changed to consistently read "FLSA Not Subject" or "FLSA Subject."
	• In Section 3, the reference to submitting FLSA information to OSHR has been removed, since this information is available in the HR-Payroll System.
	• In Section 5, the language has been made more flexible about employees acknowledging the State's overtime policy, since some agencies perform this task on paper and some perform this task using electronic means.
	• In Section 13, a sentence has been added to avoid any doubt that an employee may be disciplined for engaging in unauthorized overtime.
	• In Section 14, the "On Call" section is now entitled "Waiting Time." This text distinguishes, based on FLSA regulations, between
	  ○ An employee who is required to remain on call so that the time cannot be used for the employee's own purposes, and
	  ○ An employee who is merely required to leave word as to where they may be reached.
	• In Section 16, new text was added, based on federal regulations, concerning rest periods and break time.
	• In Section 20, several changes have been made to clarify whether time is compensable under the FLSA for specific travel situations.

Hours of Work and Overtime Compensation Policy (cont.)

	• Section 23, on exceptions to FLSA Subject status, was generally updated to reflect changes in the law. New sections were added on additional exceptions to FLSA Subject status that were not covered in the existing policy:
	  ○ The educational establishments exemption (covered in new § 23.2(b)), and
	  ○ The combination exemption (covered in new § 23.6).
	• A new section was added (§ 25.6) on when a sleep period may be excluded from hours worked.

ID Badge Policy

Contents:

§ 1. Policy

Each state agency shall establish ID badge policies for employees, contractors, and visitors. Failure to comply with such policies shall subject employees to discipline up to and including dismissal.

§ 2. Coverage

This policy covers all state agencies but does not apply to UNC System entities.

§ 3. Communication

Each State agency's Human Resources Department shall be responsible for communicating site-specific policy and revisions to their respective employees.

§ 4. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(10)

§ 5. History of This Policy

Date	Version
January 1, 2012	• New policy to assist in protecting employees and assets located within State Government Buildings by preventing unauthorized persons from accessing State agency buildings and providing a way to account for those persons authorized to be on the premises in case of an emergency
June 4, 2020	• Revised to allow State agencies flexibility to establish customized ID Badge policies for employees, contractors, and visitors,

ID Badge Policy (cont.)

	pursuant to security needs of specific worksites. The ID Badge memorandum document was moved from the Security ID Badge Policy tab to serve as a resource document under the ID Badge Policy tab to describe issues for agency consideration when developing ID badge policies that were included in the prior version of the policy.

Immigration/Employment of Foreign Nationals Policy

Contents:

§ 1. Policy

The federal Immigration Reform and Control Act (IRCA) amended the Immigration and Nationality Act by making it unlawful to hire, recruit or refer for a fee any individual who is not authorized to accept employment in the United States. This law seeks to preserve jobs for those who are legally entitled to them, and states that the employer must hire only United States citizens or aliens who are authorized to work in the United States. Additionally, all North Carolina State agencies, departments, institutions, community colleges, and local education agencies shall verify, in accordance with the E-Verify Program, each individual’s legal status or authorization to work in the United States, after hiring the individual to work in the United States.

Advisory Note: Authority for the E-Verify Program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Control Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009.

§ 2. Work Authorization

To ensure compliance with its provisions, IRCA mandates that employers certify the employment eligibility of all new employees (including United States citizens) hired on or after November 7, 1986, by requiring completion of the employment eligibility form, I-9, within three days of employment.

Verification of employment eligibility is not required for persons hired on or before November 6, 1986 who have been continuously employed by the same North Carolina agency since that date. If a current State employee accepts a position in a different

Immigration/Employment of Foreign Nationals Policy (cont.)

North Carolina state agency, their employment eligibility must be confirmed by the Immigration/Employment of Foreign Nationals completion of a new I-9 form.

This procedure must be consistently followed with regard to every employee for whom verification of employment eligibility is required.

§ 3. Employment Eligibility Verification (E-Verify Program)

In addition to the I-9 process, electronic verification using the internet based E-Verify Program is required for every newly hired employee who began work in an agency/university on or after January 1, 2007, except in the case of Local Education Agencies (LEAs). Verification by the E-Verify Program is required for all LEA employees who were newly hired on or after March 1, 2007. This program is only to be used to determine the employment eligibility of newly hired employees. Attempting to verify the employment eligibility status of a person who was employed by the State before January 1, 2007 is strictly prohibited.

A designated representative from each State agency, department, institution, community college, and local education agency is required to agree to and sign the Department of Homeland Security's Memorandum of Understanding in order to begin using the E-Verify Program.

§ 4. When to Verify Eligibility

An agency may not request documentation that a person is eligible to work in the United States until an offer of employment is made and accepted by the candidate. For that reason, an employing agency or university must secure proper administrative approvals and must complete all pre-employment screening before an offer of employment is made. In certain cases, the offer of employment may be conditional, but the conditions of the pending offer must be clearly stated to the candidate, and must be otherwise legally valid. Only after that offer of employment is made may the agency or university request documents for the completion of the I-9 form and the verification.

For a United States citizen or permanent resident, if documentation is unavailable at the time of initial employment, and the employee has applied for that documentation, a

Immigration/Employment of Foreign Nationals Policy (cont.)

receipt for that application is required, within the first three days of employment, for completion of the I-9 form. The employee must produce the original document within ninety days of hire. The E-Verify verification may be delayed until the employee submits the original documents.

Failure to complete the I-9 form or to provide documentation within three business days will result in the employee's separation from State employment.

§ 5. Employees Considered "not newly hired"

A person is not considered newly hired if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

New hires do not include:

- an employee returning from a paid or unpaid leave approved by the employer;
- an employee who has been promoted, demoted, reassigned, or received a horizontal transfer, but has not changed agencies/universities;
- an employee returning from a reduction-in-force if returning to the same agency/university;
- an employee returning after a wrongful discharge; or
- an employee engaged in seasonal employment that has a reasonable expectation to return to work in the same capacity.

§ 6. Retention of Documentation

Agencies are required to retain I-9 forms for the duration of a person's employment. If a person separates from an agency or university, the form must be kept on file for at least three years after the person's start date, or for one year after the separation date, whichever is later. Printouts of confirmations that new employees have been verified as eligible to be employed by the Basic Pilot Program should be attached to I-9 forms and maintained for the same length of time as the I-9 form.

Advisory Note: Documents used to establish work authorization should be photocopied and stapled to the original I-9.

Immigration/Employment of Foreign Nationals Policy (cont.)

Proof of legal employment eligibility in the United States must be maintained throughout an employee's tenure with the employer. Therefore, State agencies, departments, institutions, community colleges, and local education agencies must remain cognizant of the fact that certain employees may only be legally eligible to work in the United States for limited periods of time. If an employee's legal employment eligibility is temporary, it is the employer's responsibility to verify that the employee renews his or her employment eligibility, or separate that person from employment upon expiration of the temporary eligibility period.

§ 7. Re-verification

Re-verification of an employee's eligibility to work in the United States should only be conducted on those employees who attested in Section 1 of the I-9 form that they are aliens authorized to work in the United States for a limited period of time. Reverifications are not required, and are not permitted to be completed, on United States Citizen and Lawful Permanent Resident employees. The E-Verify Program is not to be used for reverification purposes. Thus, reverification of employment eligibility only involves the physical examination of employment eligibility documents, not the electronic verification of those documents. If the employee's documents are reverified electronically, the employer will be in violation of the Memorandum of Understanding, which details the employer's E-Verify Program obligations, as required by the United States Department of Homeland Security.

§ 8. Sources of Authority

- Immigration Reform and Control Act, Title I—Control of Illegal Immigration Part A—Employment Sec. 101. Control of Unlawful Employment of Aliens
- 25 NCAC 01H .0636

Immigration/Employment of Foreign Nationals Policy (cont.)

§ 9. History of This Policy

Date	Version
September 1, 2007	New Policy. New policy on employment of foreign nationals in the United States.
December 3, 2020	Policy reviewed. Advisory note is now included in the body of the policy. Policy is correct and operating as written.

In-Range Adjustment Policy

Contents:

§ 1. Definition of In-Range Adjustment

An in-range adjustment is an increase in an employee's salary within the employee's current salary range and within the agency where the employee is currently employed.

§ 2. Covered Employees

Full-time and part-time (20 hours or more) permanent, probationary, and time-limited employees are eligible for in-range salary adjustments.

Employees in trainee classifications, regardless of the appointment type, are not eligible for in-range adjustments as provided in this policy.

Temporary employees are not eligible for in-range adjustments.

§ 3. Reasons for In-Range Adjustment

See Section 5.1 of the Pay Administration Policy for the reasons why an in-range adjustment may be given.

§ 4. Amount of In-Range Adjustment

The amount of the in-range adjustment will be determined under the steps in the Pay Administration Policy. (See Section 3 of the Pay Administration Policy for details.) This includes, without limitation, completing the Baseline Salary Calculator under Section 3.3(a) of the Pay Administration Policy, analyzing budget resources and internal pay equity under Section 3.3(b) of the Policy, review of the optional pay factors under Section 3.3(b) of the

In-Range Adjustment Policy (cont.)

Policy, and measuring under Section 3.3(c) of the Policy the proposed salary after the adjustment against quartile descriptions.

Unless OSHR has provided approval, the in-range adjustment cannot exceed the increase amount established in the agency or university's flexibility authorization.

Documentation for the new salary must be established under the procedures in the Pay Administration Policy.

§ 5. Agency Responsibilities

The agency shall:

- Develop and submit to the Office of State Human Resources an in-range adjustment plan that shall:
    - Document management's commitment to the fair and equitable implementation of in-range adjustments.
    - Provide a mechanism that ensures employee understanding of plan policies and procedures.
    - Establish a procedure for identifying the need for, and determining the priority and fiscal feasibility of, implementing in-range adjustments. This shall include a method for determining individual salary adjustments considering internal equity, salary history, consistency, fairness within the work unit and organization, and salary increases granted under other policies.
    - Ensure that all salary increases are in compliance with policy.
    - Provide for the administration of this policy such that the agency does not engage in unlawful discrimination.
    - Establish procedures to document the justification of all in-range adjustments under the Pay Administration Policy.
    - Compile base-line data and establish procedures to monitor, analyze and report trends annually including the impact on all demographic groups in granting increases, exceptions granted and the fiscal impact of administering this policy on the agency budget.

In-Range Adjustment Policy (cont.)

- Designate a plan administrator who shall review and monitor agency administration and provide technical assistance in the administration of the plan to agency management.
- Establish a procedure for updating and revising the plan in response to changing budgetary and organizational priorities.
- Review the plan annually and submit any proposed revisions to the Office of State Human Resources.
- Administer in-range adjustments according to their plan and Office of State Human Resources requirements. and
- File a report annually, or as requested, with the Office of State Human Resources regarding the administration of compensation and related personnel policies.

§ 6. Office of State Personnel Responsibilities

The Office of State Human Resources shall:

- Provide training and consultation in the development of the agency plan;
- Review agency plans and recommend any necessary action to the Human Resources Commission; and
- Monitor and audit agency adherence to their plan and Human Resources Commission requirements.

§ 7. Human Resources Commission Responsibilities

The Human Resources Commission shall:

- Receive reports from the Office of State Human Resources on any noncompliance with this policy or other action needed.
- Impose sanctions on agencies that fail to comply with this policy.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2),(5).

In-Range Adjustment Policy (cont.)

§ 9. History of This Policy

Date	Version
December 1, 1995	First version - New policy New policy (Accelerated Pay Plan rescinded 2/1/96)
January 1, 2007	Added paragraph on Effective Date to clarify that in-range adjustments shall be made effective on a current basis.
January 1, 2008	Added definition of external labor market.
February 1, 2014	Changed the section for Covered Employees to move employees with a probationary appointment from ineligible to eligible.
September 7, 2017	Policy revised to delete all reference to trainee appointments, per appointments types and career status.
April 14, 2022 (effective June 1, 2022)	Policy revised to have the salary, after the in-range adjustment, be set under the process established in the Pay Administration Policy. Policy also revised to have text on reasons for an in-range adjustment transferred to the Pay Administration Policy.

Incentive Leave Policy

Contents:

§ 1. Policy

Incentive leave may be used as a recruitment tool to assist in the employment of qualified individuals who are middle or late career applicants employed outside of State government and who are interested in accepting employment with the State of North Carolina.

An agency may award incentive leave to a middle or late career applicant who is newly appointed to a position that the agency has identified as critical to the agency mission and for which the agency has documented recruitment difficulty attracting qualified applicants, or who is newly appointed to an executive or middle management position.

§ 2. Definitions

Middle or Late Career Applicant: An applicant with 10 or more years of directly related experience in their chosen profession.

Executive Management Position: A senior management position that reports directly to an appointed/elected agency head and is delegated authority to make decisions that impact the overall direction of the agency and whose duties typically involve planning, strategy, policy-making and line-management. Typical job titles include chief executive officer, chief operating officer, chief financial officer and deputy secretary.

Middle Management Position: A position that reports directly to an executive level management position and supervises lower level management positions and is delegated authority to make decisions that impact the overall direction of a department or division of an agency and whose duties typically involve program planning and coordination, organization structure, determining goals and standards, determination and interpretation of policy, and fiscal control.

Incentive Leave Policy (cont.)

Recruitment Difficulties: Positions that are highly competitive in the labor market due to specialized competencies and/or license/certifications and/or geographic location, and/or those positions in which there is a high turnover which significantly impacts the agency's efforts to recruit and provide services. Recruitment typically involves active specialized recruitment efforts utilizing multiple recruitment resources that require an extended period of recruitment and results in a limited qualified applicant pool.

Newly Appointed: The initial appointment as an employee of the State of North Carolina, or an appointment following a break in service of at least 12 months from a previous appointment as an employee of the State of North Carolina.

Employed Outside of State Government: Employed with an organization that is not part of the State of North Carolina government or not an organization for which the State currently accepts transferred accrued vacation leave upon hire.

§ 3. Recruitment Documentation

If recruitment difficulties are the basis for the application of this policy, the agency shall maintain written documentation related to difficulties in recruiting to fill positions of applicants offered incentive leave. The agency will be expected to provide this documentation to the Office of State Personnel upon request. Documentation should include high turnover rates, special required competencies, types of specialized recruitment resources used during the recruitment period, beginning and ending dates of active recruitment, number of qualified applicants in the applicant pool, and any additional documentation such as number of applicants that may have rejected offers including a reason why or applicants that may have withdrawn their application from consideration, etc.

§ 4. Eligibility Requirements

Employee must be newly appointed and have at least 10 years of experience directly related to the position. Employee must meet all qualification/competency requirements of the position.

The appointment type must meet the following leave earning eligibility criteria:

- Full-time or part-time (half time or more)
- Permanent, probationary, or time-limited

Incentive Leave Policy (cont.)

§ 5. Amount of Leave and Relationship to Other Leave

An agency may award a one-time accrual up to 20 days (160 hours) of incentive leave to an eligible new employee upon hire. The one-time leave award shall be prorated for part-time employees. For example, a half time employee would be eligible for up to 80 hours of leave upon hire. Management may negotiate the amount of leave to award to the selected applicant taking into consideration the applicant's current annual vacation leave accrual.

Upon hire, the employee will also be eligible to earn other accrued leave such as vacation/bonus leave, sick leave, etc. as allowed by policy.

Incentive leave shall be maintained and accounted for in a separate account from other accrued leave such as vacation/bonus leave, sick leave, etc.

§ 6. Carry-over and Payment of Leave

Unused incentive leave will carryover from year to year and can only be used as paid leave. Under no circumstance can it be:

- transferred to sick leave,
- paid out upon separation,
- credited toward retirement, or
- donated as voluntary shared leave.

§ 7. Transfer

When an employee transfers to another State SPA or State EPA position, unused incentive leave may be transferred subject to the receiving agency's approval. If incentive leave is not transferred, it shall not be paid out in a lump sum.

Incentive leave cannot be transferred to any non-State government employer including public school, community college, local mental health, local public health, local social services, or local emergency management employer.

§ 8. Use of Leave

Subject to supervisory approval, the incentive leave is available for use for the same reasons as allowed by the vacation leave policy.

Incentive Leave Policy (cont.)

§ 9. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1801-.1809

§ 10. History of This Policy

Date	Version
January 1, 2011	• New Policy- Allows agency management the flexibility to award a one-time accrual up to 20 days (160 hours) of incentive leave to an eligible new employee upon hire. Incentive leave shall be maintained in a separate account from other accrued leave and can only be used as paid leave; therefore, the leave cannot be cashed out and will not be paid out upon separation if not used.

Initial Classification Policy

Contents:

§ 1. Policy

Initial classification occurs in the following situations:

- when a position or a group of positions is classified and brought under the State Human Resources Act, and
- when a position under the State Human Resources Act, but not officially classified, is reviewed and a permanent classification and salary range is assigned.

§ 2. Salary Rate

When a position is initially classified and filled, the salary of the employee shall be treated as follows:

If an employee's current salary is:	the salary:
below the new salary range minimum,	shall be adjusted to the new salary range minimum.
within the new salary range,	shall remain unchanged.
above the maximum of the new salary range,	may remain unchanged.

§ 3. Qualifications

An employee is automatically qualified when the position is initially classified.

§ 4. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2);
- 25 NCAC 01D .0800

Initial Classification Policy (cont.)

§ 5. History of This Policy

Date	Version
January 1, 1976	First version - New policy Revised the salary policy to permit certain positions that are initially classified to be considered as a reallocation where it can be demonstrated that duties and responsibilities have changed significantly.
December 1, 1985	Deleted competitive service provisions.
January 1, 1990	Revised to conform to new pay plan.
August 1, 1995	Changed the terminology to “permanent, probationary, trainee appointment” rather than “permanent, probationary, trainee employment.” In addition, “timelimited” appointment has been spelled out in the appropriate policies, whereas, in the past, this type of appointment was considered to be a type of “permanent” appointment.
July 1, 2005	Revised to eliminate “hiring rate” and to change “special entry rate” to “special minimum rate.
October 1, 2020	Policy reviewed by Total Rewards – Classification and Compensation Division, to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on October 1, 2020. • Updated references from State Personnel Act to State Human Resources Act, modified language to be more specific and what is currently used in this field such as changing “new minimum rate” to “new salary range minimum” and general references from “new range” to specify “new salary range.”

Interchange of Governmental Employees Policy

Contents:

§ 1. Policy

The Interchange of Governmental Employees program allows governmental agencies at all levels to borrow from or loan to another governmental agency personnel who have special skills and knowledge useful in resolving problems of the receiving agency.

§ 2. Definitions

For purposes of this policy, the terms below mean the following:

Terms	Definition
Sending agency	any governmental agency which sends an employee to another governmental agency.
Receiving agency	any governmental agency which receives an employee of another governmental agency.
Assigned employee	an employee of a sending agency who is assigned or detailed to a receiving agency as part of the employee's regular duties with the sending agency.

Interchange of Governmental Employees Policy (cont.)

Employee on leave	an employee on leave of absence without pay from a sending agency who becomes an employee of a receiving agency while on leave from the sending agency.

§ 3. Application

Any division, department, agency, instrumentality, authority, or political subdivision of the State is authorized to participate in the program with divisions, departments, agencies, instrumentalities, authorities, or political subdivisions of the Federal government; of another state or of this State as a sending or receiving agency.

§ 4. Exclusions

Elected officials may not participate in the program.

§ 5. Guidelines

The following procedure shall be used for all interchanges:

- All interchanges must be negotiated with the employee, the sending agency, and the receiving agency.
- A written agreement stating the responsibilities of all parties involved shall be submitted to the State Human Resources Director for approval.
- Approval must be received prior to the effective date of the agreement.
- If a Federal agency is involved, a copy of the Federal form “Assignment Agreement, Optional Form 69” may be submitted.
- If a Federal agency is not involved a Memorandum of Agreement shall be used.
- A statement must be attached indicating if the employee’s same salary and employee benefits are to be maintained during the interchange.

§ 6. Length of Assignment

The minimum period of assignment will be one month. The maximum period that employees may be assigned or on leave is two years.

Interchange of Governmental Employees Policy (cont.)

§ 7. Travel Expenses

Any travel expenses for the employee involved in an interchange shall be borne by the receiving agency.

§ 8. Salary and Benefits

Employees maintain the same salary and employment benefits during the interchange unless provided for otherwise by the written agreement.

The employee's retirement contributions and the employer's retirement contributions will continue as though the employee were at the normal duty station.

An employee on leave of absence without pay would need to make monthly contributions; in addition, the employer contributions would be paid by the sending agency. The sending agency may recover these funds from the receiving agency, depending on the negotiated terms of the agreement.

Under either type of interchange, the employee would be considered as in service for the Death Benefit provisions regardless of whether contributions are continued.

§ 9. Termination

The temporary assignment of the employee may be terminated by:

- the termination date specified on the agreement, or
- mutual agreement between the sending and receiving agencies.

§ 10. Sources of Authority

- N.C.G.S. § 126-52
- 25 NCAC 01M .0100

§ 11. History of This Policy

Date	Version
May 23, 1973	• IPA Government Service Fellowship Program.
February 1, 1978	• Policy on Interchange of Governmental Employees.

Interchange of Governmental Employees Policy (cont.)

August 1, 1979	• Adds definition of employee on leave, requires that the agreement be filed prior to the effective date and have the approval of the State Personnel Director; and requires the sending agency (State) to make benefit contributions so that agency could get the money from the receiving agency or from the employee, depending on the negotiated terms of the agreement.
February 4, 2021	• Policy reviewed by Total Rewards-Salary Administration Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on February 4, 2021.

Lactation Support Policy

Contents:

§ 1. Purpose

This policy provides guidelines that will assist agencies in the development of work/life balance initiatives to support the wellness and health of employees of North Carolina State Government. Work/life balance initiatives have proven to be effective recruitment and retention strategies as agencies compete for a diverse workforce to deliver efficient services to the citizens of North Carolina.

Research has shown that lactation support is beneficial to the working, nursing employee, as well as to employers by decreasing medical expenses; reducing absenteeism; increasing employee retention; and improving morale in the workplace. This policy is intended to give agencies a general outline of the minimum level of support to be provided to employees who are nursing. An agency may adopt additional areas of support that are consistent with this policy.

§ 2. Policy

It is the policy of North Carolina State Government to assist working parents with the transition back to work following the birth of a child by providing lactation support. A lactation support program allows nursing employees to express their milk periodically during the workday. This policy applies to all state employees. See the Reasonable Accommodation policy for information about accommodation under the Pregnant Workers Fairness Act (PWFA).

Lactation Support Policy (cont.)

§ 3. Office of State Human Resources Responsibility

The Office of State Human Resources will designate a program coordinator to assist agencies and employees with questions regarding this policy. If an employee contacts OSHR with concerns under Section 5 of this policy, OSHR will provide guidance to the agency and employee about how federal law and this policy should be applied.

§ 4. Agency Responsibilities

State agencies shall provide space, privacy, and time for nursing employees to express their milk, as required under the Fair Labor Standards Act.

Agencies may not retaliate against an employee if an employee files or makes any sort of complaint, whether oral or written, that alleges the employee is not receiving the time or space for expressing milk as required under the FLSA or PWFA.

§ 4.1. Designated, Private Space

When needed, the agency shall provide a private space that is not in a restroom or other common area. The space shall be shielded from view and free from intrusion from staff and the public with a door that can be secured or locked, adequate lighting and seating, and electrical outlets for pumping equipment.[1] If a space is not dedicated to the nursing employee's use, it must be available when needed by the employee in order to meet the requirement under the law. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing employee is sufficient provided it meets the minimum requirements listed above.

In identifying a designated space for lactation, the agency should consider the proximity of the space to the employee's work area. Additionally, agencies should consider the distance of the space in relation to a source of running water.

Employees who telework must also be free from observation by any employer-provided or required video system, including computer camera, security camera, or web conferencing platform.

Agencies are encouraged, if possible, to provide a designated, permanent space available for use by nursing employees. However, agencies should still be willing to

[1] 29 U.S.C. 218d(a)(2)

Lactation Support Policy (cont.)

consider requests by the nursing employee about the space available for expressing milk to meet the individual nursing employee's specific needs.

§ 4.2. Time

The nursing employee has the right to take reasonable break time to express their milk for their nursing child.[2] The frequency and duration of breaks needed to express milk will likely vary depending on factors related to the nursing employee. Agencies may not deny an employee a needed break to express milk. Agencies may not require an employee to adhere to a fixed schedule that does not meet the employee's need for break time each time the employee needs to pump. Generally, under the FLSA, short breaks of 20 minutes or less must be counted as time worked.[3] If the employee is completely relieved from duty, and the break is:

- 20 minutes or less, the break is considered work time.
- more than 20 minutes, the entire break must be documented as paid or unpaid leave, or if appropriate, the employee may flex their workday to make up the time. [4]

If the employee is not completely relieved from duty, the time to express milk is counted as work time.[5] Refer to the Hours of Work and Overtime Compensation policy for more information about the FLSA.

§ 5. Employee Responsibility

The employee will be responsible for storage of their expressed milk.

The nursing employee should contact their supervisor or HR department if they believe an appropriate space for expressing milk has not been provided. Nursing employees may contact OSHR if they believe their agency is not responsive to concerns raised about the agency obligations under this policy. Employees may visit the US Department of Labor, Wage and Hour division website for more information.

[2] 29 U.S.C 218d(a)(1)
[3] 29 CFR 785.18
[4] 29 U.S.C. 218d(b)(1)
[5] 29 U.S.C. 218d(b)(2)

Lactation Support Policy (cont.)

§ 6. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5) and (10)
- Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), part of the FLSA of 1938 (29 U.S.C. 218d).

It is compliant with the Administrative Code rules at:

- 25 NCAC 01N Section .0600, Lactation Support

§ 7. History of This Policy

Date	Version
July 1, 2010	• First version. This policy is in compliance with The Patient Protection and Affordable Care Act (H.R. 3590) which was signed into law on March 22, 2010.
February 15, 2024	• Revised policy for compliance with The Providing Urgent Maternal Protections for Nursing Mothers Act (H.R. 3110) (the PUMP Act) which was signed into law on December 29, 2022. • Revised policy to replace mother with employee and breast milk with milk • In Section 2, added a statement that this policy applies to all employees and a cross reference to the Reasonable Accommodation policy and Pregnant Workers Fairness Act. • In Section 3, added a statement that OSHR will investigate concerns raised by employees to OSHR and provide guidance to the agency and employee about how federal law and the policy should be applied. • In Section 4, clarified that this policy is related to a provision of the Fair Labor Standard Act, that agencies are required to provide time and space for expressing milk, and may not retaliate against an employee for any complaints that allege an agency is not complying with the Act.

Lactation Support Policy (cont.)

	• Created section 4.1 that details the agency requirements and considerations related to the designated, private space for an employee to express milk. • Created section 4.2 that details the requirement for an agency to allow an employee the time needed to express milk, including when that time is considered time worked. • Added that an employee has a responsibility to notify their supervisor or HR Department if they believe the agency has not provided a designated, private space for expressing milk. • Added the PUMP Act as source of authority.

Leave Without Pay Policy

Contents:

§ 1. Policy

Leave without pay may be granted for illness, education purposes, vacation, or for any other reasons deemed justified by the agency head.

Special provisions for leave without pay for military, family and medical, and workers' compensation are covered in these respective policies in this Section of the Personnel Manual. Parental leave without pay for employees not eligible for FMLA leave is covered at the end of this policy.

§ 2. Covered Employees

Full-time or part-time (half-time or more) permanent, probationary, trainee and time-limited employees are eligible for leave without pay.

Leave Without Pay Policy (cont.)

Temporary, intermittent, and part-time (less than half-time) are not eligible for leave without pay.

§ 3. Definitions

Following are definitions of terms used in this policy:

Extended Leave Without Pay**:** leave in excess of one-half the workdays and holidays in the month or in the pay period (whichever is applicable)

Short Leave Without Pay**:** leave for less than one-half the workdays and holidays in the month or in the pay period (whichever is applicable)

§ 4. Extended Leave Without Pay

§ 4.1. Maximum Amount

Except for extended illness, extended leave without pay normally shall not exceed six months. The decision to grant leave without pay and the amount of time granted, except for leave required by the FMLA Policy, is an administrative one for which the agency head must assume full responsibility.

§ 4.2. Employee Responsibility

The employee shall:

- apply in writing to the supervisor for leave without pay,
- give written notice of intention to return to work at least thirty days prior to the end of the leave, and
- return to duty within or at the end of the time granted, or
- notify the agency immediately when there is a decision not to return.

If the employee does not give notice of the intention to return, the agency is not required to provide reinstatement but may do so if feasible. Failure to report at the expiration of a leave, unless an extension has been requested and approved, may be considered as a resignation.

Leave Without Pay Policy (cont.)

§ 4.3. Agency Responsibility

Factors to consider in determining whether to grant leave without pay and the amount of time to approve are:

- needs of the employee requesting leave, workload,
- need for filling employee's job,
- chances of employee returning to duty, and
- the obligation of the agency to reinstate employee to a position of like status and pay.

It is the responsibility of the agency to administer leave without pay in a manner that is equitable to all of its employees.

§ 4.4. Extended Illness

Advisory Note: When an employee has a personal illness, the agency must consider the following:

* Does the need for leave qualify as Family and Medical Leave? If so, the rules of that policy shall be applied first.
* Is the illness likely to result in participation in the Disability Income Plan?
* Does the employee qualify for Voluntary Shared Leave?

Taking these into consideration, the agency should explain these policies to the employee and assist in determining which are applicable.

Leave without pay for extended illness may be:

Granted for:	For a period	Sick leave	Vacation/Bonus leave
Employee illness (not covered by short-term disability or FMLA)	up to one year. Any extension shall be managed/ documented by the agency head.	shall be exhausted during the time that would cover the waiting period required by DIP.	may be exhausted or retained. (*See note below.)

Leave Without Pay Policy (cont.)

Disability Income Plan (Short-term disability)	up to one year. Any extension must be approved by the Retirement System Medical Board.	shall be exhausted during the waiting period. Additional sick leave may be exhausted or retained.	may be exhausted or retained.
Family and Medical Leave	up to twelve workweeks (See FMLA Policy).	shall be exhausted for employee illness. See FMLA Policy for other options.	may be exhausted or retained.
	* If leave does not qualify for FMLA, the agency may also require that the employee use accumulated vacation/bonus leave before granting leave without pay.		

Advisory Note:

Eligible employees who become temporarily or permanently disabled and are unable to perform their regular work duties may receive partial replacement income through the Disability Income Plan of North Carolina (DIPNC). The DIPNC is explained in a handbook, “Your Retirement Benefits,” published by the Department of State Treasurer, Retirement Systems Division. Exhaustion of sick, vacation/bonus leave during the short-term disability period is in lieu of short-term disability benefits that may otherwise be payable.

Procedure: The date separated shall be the last day of work or the last day leave is exhausted, whichever is later; however, in cases where no leave is available and the disability occurs after the last day of work and before the beginning of the next workday, the date separated shall be the date the disability occurs. This is necessary to assure that the employee is considered to be in service for the purposes of determining short-term disability benefits.

Leave Without Pay Policy (cont.)

§ 4.5. Special Provision for Long-Term Disability

If an employee is approved for long-term disability following the short-term disability, the employee must be separated from leave without pay. The employee shall be reinstated to the payroll for the purpose of exhausting any unused vacation/bonus and sick leave the employee had prior to going on leave without pay.

Exception: The employee may choose to apply the sick leave credits toward retirement if the employee would be eligible for service retirement within a five-year period.

Note: Under the laws governing the DIP, the long-term disability is not payable until the leave has been exhausted. The agency is responsible for paying the employer's share of medical benefits while leave is exhausted.

§ 4.6. Vacation

An employee must exhaust all accumulated vacation/bonus leave before going on leave without pay for the purpose of vacation.

§ 4.7. Personal or Other Reasons

An employee must exhaust accumulated vacation/bonus leave for personal or other reasons if the leave period is 10 workdays or less. If the leave period is greater than 10 workdays, the employee may elect to exhaust all, part, or none of the vacation/bonus leave prior to going on leave without pay.

§ 4.8. Exhausting Leave

While exhausting leave, the employee:

- continues to accumulate leave,
- is eligible to take sick leave,
- is entitled to holidays, and
- is eligible for salary increases during that period.

Any accumulated unused vacation/bonus leave or sick leave shall be retained. Eligibility to accumulate leave ceases on the date leave without pay begins.

Leave Without Pay Policy (cont.)

If leave without pay extends through December 31, any vacation leave accumulation above 240 hours shall be converted to sick leave. (Bonus leave does not convert to sick leave.)

§ 4.9. Health Insurance

While on leave without pay the employee may continue coverage under the State's health insurance program by paying the full premium cost (no contribution by the State).

§ 4.10. Retirement Status

All accumulated retirement credits shall be retained. If the leave without pay is granted for purposes which will tend to make the person a more valuable employee, permission may be received from the Board of Trustees of the Teachers' and State Employees' Retirement System to make personal contributions to the retirement account during this period and receive service credit. The request must be made in advance by the agency head and the employing agency must agree to pay its share of the cost. The employee should contact the Retirement System for information regarding all specific requirements.

§ 4.11. Reinstatement

Reinstatement to the same position or one of like seniority, status and pay must be made upon the employee's return to work unless other arrangements are agreed to in writing.

§ 4.12. Separation While on Leave without Pay

If the employee does not return to work following leave without pay, the employee shall be paid for any unused vacation/bonus leave at time of separation.

§ 4.13. Filling a Position Vacant by Leave without Pay

If it is necessary to fill a position vacant by leave without pay, the position may be filled by a temporary or time-limited permanent appointment, whichever is appropriate.

Leave Without Pay Policy (cont.)

§ 5. Short Leave Without Pay

§ 5.1. Approved Absences

With approval of the supervisor, an employee may be on leave without pay for less than one-half the workdays and holidays in the month or pay period and continue to earn benefits. This accounts for time an employee is absent and has not accumulated or advanced leave credits. These short periods may be docked from the employee's pay check without submitting a personnel action form.

Exception: When placing an employee on leave without pay due to suspension, a PD-105 must be submitted, including those that are less than half the workdays in a month.

§ 5.2. Unapproved Absences

Employees who are absent without approved leave may be subject to disciplinary action.

Short leave without pay may be used to cover the status of an employee who has failed to come to work but has not requested and received approval to take sick or vacation/bonus leave. Agency management is responsible for determining whether leave without pay is appropriate or whether the time may be charged to the appropriate leave account.

§ 6. Special Provisions for Parental Leave

§ 6.1. Policy

Employees who are not eligible for leave under the FMLA Policy shall be granted leave during the period of the biological mother's disability and may be granted additional leave for childbirth and adoptions.

Advisory Note: The FMLA Policy provides for family and medical leave for employees who have been employed with State government for at least 12 months and who have worked at least 1040 hours during the previous 12-month period.

Leave Without Pay Policy (cont.)

§ 6.2. Leave Required During Period of Disability

The agency shall grant leave with or without pay to the biological mother for all of the time of personal disability. The biological mother may use accumulated sick leave during this period, and may choose to use vacation/bonus leave or leave without pay.

A doctor's certificate or other acceptable proof shall be required verifying the employee's period of temporary disability.

See also the **FMLA Policy, Paid Parental Leave Policy** and **Reasonable Accommodation Policy** for types of leave that may be available after childbirth, adoption, or foster care placement.

§ 6.3. Additional Leave

The biological mother may desire to be on leave prior to and/or after the time of actual disability. The agency may grant vacation/bonus leave, if available, and may grant leave without pay for this purpose.

§ 6.4. Leave for Immediate Family

The agency may allow a member of the immediate family (as defined in the Sick Leave Policy) to use accumulated sick leave to care for the biological mother during the period of disability. Or, the family member may be allowed to use vacation/bonus leave or leave without pay.

§ 6.5. Adoption

The parents of a newly-adopted child may request to use vacation/bonus leave, leave without pay or a maximum of 30 days of sick leave (see Sick Leave Policy).

The agency may require evidence satisfactory to the agency in support of an employee's request for sick leave for adoption-related purposes.

§ 7. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. 126-4(5)

Leave Without Pay Policy (cont.)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1100

§ 8. History of This Policy

Date	Version
November 29, 1951	In cases of extended sick leave, both sick and annual leave must be exhausted before leave without pay is granted. In other cases where leave without pay is required, annual leave must be exhausted before leave without pay can begin.
September 18, 1953	Maternity Leave policy adopted. Leave is without pay, sick leave may not be used and annual leave must be paid as terminal leave.
December 15, 1969	Leave without pay normally will not exceed one year except that it may be extended when necessary and justified.
December 17, 1970	Maternity leave without pay shall be granted to full-time permanent, probationary or provisional employees. Annual leave must be paid same as terminal leave.
June 20, 1972	Limitation of employment before childbirth is prohibited, each agency responsible for determining how far into pregnancy she may continue to work. Annual leave must be exhausted before going on leave without pay. Accumulated sick leave is provided for actual period of temporary disability. Employee retains benefits. Increment anniversary date delayed one month for each month on leave without pay.
January 1, 1976	Removed mandatory requirement for doctor's certification of disability to make it consistent with sick leave policy, and changes the stated maximum extension of twelve months to an extension based on actual need. Deletes special provision for short periods of LWOP.
March 1, 1978	An employee going on sick leave without pay, military leave without pay, maternity leave, workmen's compensation leave or any other leave without pay, except for vacation purposes, may retain part or all of accumulated leave until the employee returns to work.

Leave Without Pay Policy (cont.)

February 1, 1981	Adoption leave policy
June 1, 1982	Combined maternity leave and adoption leave policies into the general leave without pay policies as parental leave. Provides that an agency must give leave without pay for the time of disability for the natural mother and further provides than an agency may give leave without pay to the father of a natural child or to the parents of an adopted child.
November 1, 1990	Provisions for LWOP - RIF & Policy Making - deleted. No longer needed Defined Extended LWOP and Short LWOP. Added provision for deducting employee's pay, if absent without approval.
December 1, 1993	Provision added to cover parental leave for employees who are eligible for FMLA leave. Also changed to covert excess vacation to sick leave at end of year.
December 1, 1995	Revised to include provision for parents to use 30 days sick leave for adoption purposes.
September 30, 2002	Added provisions for bonus leave.
November 1, 2009	Corrected an omission on Page 67.
August 7, 2023	Added a cross reference to the FMLA Policy, Paid Parental Leave Policy and Reasonable Accommodation policy to section 6 of this policy.

Limitation of Political Activity Policy

Contents:

§ 1. State Statutory Authority

Note: Some employees are exempt from the statutes discussed below. Employees with questions about whether they are exempt from these statutes should consult their agency's General Counsel's Office.

§ 1.1. Section 126-13 (Appropriate political activity of state employees defined)

Most state employees are subject to section 126-13(a) of the North Carolina General Statutes.[1] In general, this statute prohibits covered employees from engaging in political activity (including without limitation taking an active part in managing a campaign) while on duty or during work hours, and the statute prohibits covered employees from using state resources or the authority of a state position to secure support for (or oppose) any political candidates. Subsection (a) of the statute reads:

> § 126-13. Appropriate political activity of State employees defined.
>
> (a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the North Carolina Human Resources Act or temporary State employee shall:
>
> (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time

[1] Section 126-13, which is part of Article 5 of the State Human Resources Act, does not apply to the following types of employees: exempt policymaking, exempt managerial, chief deputies or chief administrative assistants, confidential assistants, confidential secretaries, and certain kinds of statutorily exempt employees. *See* N.C.G.S. § 126-5(c)-(c3), (c7)-(c8), (c16), and § 126-11 (stating these exceptions).

Limitation of Political Activity Policy(cont.)

during which he is expected to perform services for which he receives compensation from the State;

(2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

N.C.G.S. § 126-13(a).

The statute also provides that no state institution shall "interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State." N.C.G.S. § 126-13(b).

§ 1.2. **Sections 126-14 and 14.1 (Promises or threats to obtain political contributions or support)**

In addition, state employees are subject to N.C.G.S. § 126-14, which prohibits promises or reward or threats of loss to support or contribute to a political candidate, committee, or party.[2] The statute makes it unlawful "to coerce" certain state employees or applicants "to support or contribute to a political candidate, political committee …, or political party," or to change party, by threatening "a change in employment status or discipline," or by promising "preferential personnel treatment." N.C.G.S. 126-14(a).[3] The statute prohibits these threats or promises if made to state employees subject to the Human Resources Act, applicants for positions subject to the Human Resources Act, and probationary or temporary state employees. *Id.*

The statute also prohibits constitutional officers of the State from coercing anyone to make support or contributions to a political candidate, committee, or party by "threatening discipline or promising preferential treatment with regard to [a] person's business" with a State office or with a person's activities regulated by a State office. N.C.G.S. § 126-14(a1) (cross-referencing N.C.G.S. § 138A-3(70)(a) and § 138A-32(d)(1)-(3)).

[2] This statute states that it applies to state employees or persons appointed to State office "whether or not subject to the North Carolina Human Resources Act." N.C.G.S. § 126-14(a).

[3] *See also* N.C.G.S. § 126-14.1, which uses almost precisely the same language.

Limitation of Political Activity Policy(cont.)

§ 2. **Federal Statutory Authority**

Employees in federally aided programs are also subject to the Federal Hatch Political Activities Act, as amended, 5 U.S.C. §§ 1501-1508 (hereinafter Hatch Act).

The Hatch Act prohibits state employees whose positions "are financed in whole or in part by [federal] loans or grants" from using "official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office." 5 U.S.C. § 1502(a)(1). The federal statute also provides that state employees whose positions "are financed in whole or in part by loans or grants" may not "directly or indirectly coerce" a state or local officer or employee to "pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes." 5 U.S.C. § 1502(a)(2).

Finally, the federal statute prohibits a state employee whose salary "is paid completely, directly or indirectly, by [federal] loans or grants" from being "a candidate for elective office." 5 U.S.C. § 1502(a)(3) (emphasis added).

These provisions of the Hatch Act do not apply to employees of public universities. 5 U.S.C. § 1501(4)(B). In addition, state employees "exercising no functions in connection with" the federally funded activity will generally not be covered by the Hatch Act. 5 U.S.C. § 1501(4)(A).

§ 3. **Miscellaneous Terms**

§ 3.1. **Relationship of this Policy to Laws and Statutes**

This Limitation of Political Activity Policy, first adopted in 1967, acts only as a nonbinding interpretive statement that explains the meaning of the statutes and administrative code rules listed and summarized above. The text of each statute, not this policy, governs employees' conduct, and this policy does not create any duties, responsibilities, or restrictions that are not found in the text of the statute.

Failure to comply with a law may be grounds for disciplinary action, as stated in the Disciplinary Action Policy.

Limitation of Political Activity Policy(cont.)

§ 4. Sources of Authority

This policy is issued under the following source of law:

- N.C.G.S. § 126-1 states:

  "The Office of State Human Resources shall make recommendations for policies and rules to the Commission based on research and study in the field of personnel management, develop and administer statewide standards and criteria for good personnel management, [and] provide training and technical assistance to all agencies, departments, and institutions."

§ 5. History of This Policy

Date	Version
July 1, 1967	Amendment to State Personnel Act which prohibits certain political activities. Policy adopted to implement this.
December 2, 2021	Updated the text to reflect amendments to state statutes since the date of the original policy. Added a paragraph summarizing the federal Hatch Act. Added a paragraph making clear this policy is only a nonbinding interpretive statement summarizing state statutes.

Longevity Pay Policy

Contents:

§ 1. Policy

Longevity pay is to recognize long-term service. An eligible employee who has at least ten (10) years of total State service shall receive a lump sum payment annually as outlined below.

Payment shall be made during the same monthly pay period or by the second biweekly pay period following the date the employee is eligible to receive longevity pay. This includes employees on workers' compensation leave.

§ 2. Covered Employees

Full-time and part-time (20 hours or more) permanent, probationary, and time-limited employees are eligible for longevity pay.

Part-time (less than 20 hours) and temporary employees are not eligible for longevity pay.

§ 3. Amount of Longevity

Annual longevity pay amounts are based on the length of total State service and a percentage of the employee's annual rate of base pay on the date of eligibility. Longevity pay amounts are computed by multiplying the employee's base pay rate by the appropriate

Longevity Pay Policy (cont.)

percentage from the following table: (Note: Salary increases effective on the longevity eligibility date shall be incorporated in the base pay before computing longevity.)

Years of Total State Service	Longevity Pay Rate
10 but less than 15 years	1.50 percent
15 but less than 20 years	2.25 percent
20 but less than 25 years	3.25 percent
25 or more years	4.50 percent

Total State Service Defined

Total State service is the time of full-time or part-time (20 hours or more) employment of employees with a permanent, probationary or time-limited appointment, whether subject to or exempt from the State Human Resources Act. If an employee so appointed is in pay status or is on authorized military leave or workers' compensation leave for one-half or more of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period.

If an employee's work schedule is less than 12 months and the employee works all the months scheduled (e.g., a school year), the agency shall credit time for the full year; however, if the employee works less than the scheduled time, the agency shall credit time on a month for month basis for the actual months worked.

Credit shall also be given for:

- Employment with other governmental units which are now State agencies (Examples: county highway maintenance forces, War Manpower Commission, Judicial System).
- Authorized military leave from any of the governmental units for which service credit is granted provided the employee is reinstated within the time limits outlined in the State military leave policies.
- Authorized worker's compensation leave from any of the governmental units for which service credit is granted;
- Employment with the county Agricultural Extension Service; Community College System and the public school system of North Carolina, with the provision that a school year is equivalent to one full year (credit for a partial year is given on a month-for-month basis for the actual months worked).

Longevity Pay Policy (cont.)

- Employment with a local Mental Health, Public Health, Social Services or Emergency Management agency in North Carolina if such employment is subject to the State Human Resources Act.
- Employment with the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees shall be counted; and the full legislative terms of the members.

§ 4. **Separation – Prorated Longevity Payment**

A prorated longevity payment shall be made to an eligible employee who retires, resigns or is otherwise separated before the date of annual eligibility.

When an employee dies, payment shall be made to the estate.

The longevity pay amount shall be computed on the salary as of the last day worked; then it is prorated by an amount equal to the proportion of the year worked toward the annual eligibility date.

Example: The employee will receive 1/12 of the annual amount for each month worked toward the next longevity payment. Thus, if an employee received longevity on January 1 and separates on July 31, 7/12 of the full longevity payment would be paid.

The payment should be made to the nearest cent rather than the nearest dollar.

The only exception is if an employee has a fraction of a year toward the next higher percentage rate, the payment would be based on the higher rate. For example, if an employee has 19 years and 3 months service, the payment would be 3.25% rather than 2.25%.

If the employee is reinstated, the balance of the longevity payment shall be made upon completion of additional service totaling 12 months since the last full longevity payment. The balance due is computed on the annual salary being paid at the completion of the 12 months.

§ 5. **Transfer between State Agencies**

If an employee transfers between State agencies, the receiving agency shall pay the longevity payment based on the salary in effect on the eligibility date.

Longevity Pay Policy (cont.)

§ 6. **Reemployment from Another System**

If an employee comes to work in a position that is subject to the Human Resources Act from a system (such as judicial, county, public schools, etc.) that has a longevity policy which allows partial payments, the receiving State agency shall verify that such payment was or was not made. Then, the State agency shall pay the remainder of the payment when the employee becomes eligible.

§ 7. **Appointment Change**

If an employee's appointment changes to an appointment type that is ineligible for continued longevity pay, a prorated longevity payment shall be made as if the employee were separating from State service. Exception: The prorated payment is not required if the appointment change is of a temporary nature and will result in the employee returning to their longevity eligible appointment status prior to their next annual eligibility date.

Example: On May 1 an employee with 12 yrs 3 mos TSS transfers from SPA to EPA and is expected to transfer back to an SPA appointment on September 1 before the next anniversary date of February 1; therefore, the prorated longevity payment is not required.

§ 8. **LWOP (except Military Leave, Short-Term Disability, and WC Leave)**

If an eligible employee goes on leave without pay, longevity shall not be paid until the employee returns and completes the full year. If, however, the employee should resign while on leave without pay, the prorated amount for which the employee is eligible is paid.

§ 9. **Military Leave**

If an eligible employee goes on extended military leave without pay, a longevity payment computed on a prorated basis shall be paid. The balance will be paid when the employee returns and completes a full year. Then, a full payment will be made on the employee's longevity date that was established before going on leave without pay.

Example: Received longevity on 6-1-95 on 11 years; extended military leave without pay on 9-1-95 (pay 3/12 longevity on 12 years); reinstated on 12-1-96; pay 9/12 longevity effective 9-1-97 on 13 years (has 13 years 3 months total State service); pay full longevity effective 6-1-98 on 14 years.

Longevity Pay Policy (cont.)

§ 10. **Short-Term Disability**

If an eligible employee goes on leave without pay due to short-term disability, a prorated longevity payment may be made at the time the employee leaves.

§ 11. **Workers' Compensation**

If an eligible employee goes on workers' compensation leave, longevity shall be paid as if the employee were working.

§ 12. **Agency Responsibility**

Each State agency head shall be responsible for determining the quantity of qualifying service of each employee of that agency. Upon eligibility for longevity pay, the agency shall submit proper forms for payment and certify the length of qualifying service to the Office of State Human Resources.

§ 13. **Effect of Longevity Pay**

Longevity pay is not a part of annual base pay for, nor is it to be recorded in personnel records as a part of annual base salary.

§ 14. **Sources of Authority**

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2);
- 25 NCAC 01D .0800

§ 15. **History of This Policy**

Date	Version
1961	First version - New policy General Assembly passed enabling legislation (Amendment to G.S. 143-36)
1962	Longevity policy established. Requires employee to have 15 years of employment with the State as a permanent, full-time employee and have served the last three years of employment at the maximum

Longevity Pay Policy (cont.)

	annual rate of his classification; and be recommended by the agency head as having served the State in a meritorious manner worthy of recognition and encouragement. (First payment between February 1-15, 1963, who were eligible on December 1, 1962.)
January 25, 1963	If the employee's present salary does not exceed the maximum annual rate for his classification by more than the scheduled longevity payment, the employee will be eligible to receive the full longevity payment, based on the maximum of his salary grade.
July 1, 1973	New longevity plan adopted - graduated percentage based on aggregate service beginning with 15 years. Aggregate service revised to include local SPA employment.
August 3, 1973	Aggregate service to include permanent part-time employment.
December 13, 1974	Aggregate service amended to include County Agriculture Extension Service.
July 1, 1975	Approved partial longevity payments for employees leaving.
July 1, 1977	Longevity pay to begin at completion of 10 years at the rate of 1.5%. Revised to allow service for authorized military leave from any of the governmental units for which service credit is granted.
August 1, 1981	Aggregate service - clarifies that service credit will be given for any month in which an employee works at least half of the workdays in that month.
October 1, 1981	Reestablishes that an employee will be credited for a full month in any month in which the employee works at least half of the workdays in that month. AND deletes the sentence stating "provided that the employee was working at the time these units became state agencies" dealing with other governmental units.
July 1, 1982	Aggregate service amended to include former employment in the General Assembly.
December 1, 1982	Aggregate service credit - clarifies that permanent part-time employees are credited with aggregate service on a pro rata basis.
June 1, 1983	Redefinition of aggregate service.

Longevity Pay Policy (cont.)

1987-1989	Appropriations Act amended GS 138-4 to provide longevity pay for executives on same basis as SPA employees effective July 1, 1987.
July 1, 1987	Added legislative terms of members to aggregate service.
January 1, 1989	Pay status changed to half the workdays and holidays.
July 1, 1989	Part-time employees granted Longevity - Full total State service granted for part-time employment if half-time or more.
August 1, 1995	Changes the terminology in other policies to “permanent, probationary, trainee appointment” rather than “permanent, probationary, trainee employment.” In addition, “time-limited” appointment has been spelled out in the appropriate policies, whereas, in the past, this type of appointment was considered to be a type of “permanent” appointment.
January 1, 2002	Revised to include an omission: Add Workers' Comp Leave under creditable total state service.
November 1, 2004	Clarified how longevity is paid upon transfer to an appointment type that is ineligible for continued longevity pay.
September 7, 2017	Policy revised to delete all reference to trainee appointments, per appointment types and career status.

Mentoring Program Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina to offer mentorship programs to all state employees through an agency-governed mentoring program regardless of race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information, or disability.

The purpose of this program is to enhance an employee's career development by implementing the mentoring program to provide experiential learning opportunities through professional collaborations that can significantly enhance an employee's career advancement by improving employee performance and developing employee skills. The mentoring program will partner an employee with a more experienced employee who will coach, teach, and guide the employee's career path.

§ 2. Definitions

Mentorship: a professional partnership in which a person with more experience, expertise, and knowledge supports, teaches, advises, guides, and helps another person develop professionally.

Mentor: an experienced individual with expertise who advises, sponsors, trains, teaches, guides, and supports the career development of a mentee.

Mentee: a person who receives from a mentor training, guidance, support and advice on professional and career development.

Traditional/One-on-One Mentoring: a mentoring arrangement between a mentor and a mentee.

Mentoring Program Policy (cont.)

Group Mentoring: a mentoring arrangement in which a single mentor is matched with more than one mentee.

Distance Mentoring: a mentoring arrangement in which a mentor and mentee(s) are in different locations.

Situational Mentoring: a mentorship intended for a specific purpose, career goal, or skill acquisition.

§ 3. Program Administration

Each state agency may elect to establish a mentoring program. The program shall consist of a joint effort of the North Carolina Office of State Human Resources and any branch of state government. Administration of the statewide program shall be based in the Office of State Human Resources with each agency being responsible for the establishment and management of a mentoring program that meet its organizational needs.

The Office of State Human Resources will provide consultation, resources, and technical assistance to agencies wishing to develop and implement a mentoring program. Agencies will submit a copy of their mentoring program, the name of their mentoring program coordinator/manager, and any updates as they occur to the Office of State Human Resources. The status of an agency's mentoring program will be tracked and reported annually by the Office of State Human Resources.

The mentoring program will meet the needs of the agency, which include but are not limited to recruitment, retention, engagement, knowledge sharing, training, and improvement in the work environment.

An employee's participation in the mentoring program does not guarantee promotion nor entitle the employee to preferential treatment in employment issues.

§ 4. Program Curriculum

The mentoring program provides four mentorship options to state employees: (1) Traditional/One-on-one, (2) Group, (3) Distance, and (4) Situational. [See descriptions of mentorship options in the Definitions section of this policy.] Each agency is responsible for determining the mentorship option(s) that best meets its organizational and employees' needs.

Mentoring Program Policy (cont.)

Agencies are encouraged to provide a specific number of hours per year for individual sessions between the mentor and mentee in accordance with their mentoring program guidelines. In addition to the guidance and assistance the mentee will gain from the mentor, agencies may plan group activities for program participants. These activities can be conducted on a monthly basis such as monthly forums, and on an annual basis for agencies with a statewide employee population. The activities should be tailored around professional development initiatives. The agencies may consult with the Office of State Human Resources on topics and presenters for the monthly forums.

§ 5. Participation

The selection process will be developed by the agency utilizing fair, consistent, and equitable criteria. The agency will document its selection criteria and process. Each agency's mentoring program must be open to all employees; however, limitations may be instituted based on various criteria such as mentor/mentee ratios, geographical constraints, and other items of concern for the agency's administrative personnel. Participation in the mentoring program is completely voluntary. The duration of a participant's involvement in the mentoring program is dependent upon the guidelines stipulated by the governing agency; however, at least one (1) year is encouraged.

The Office of State Human Resources does not condone any discrimination in terms of membership or treatment. Participation in the program cannot be determined by race, color, religion, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation. National Guard or veteran status, genetic information, or disability.

§ 6. Completion of Program

Each agency is encouraged to recognize in some form the mentors and mentees participating upon completion of the program. Additionally, the agency shall inform the

Office of State Human Resources of its participants so that the Office of State Human Resources may recognize the employees and the agency in its recognition program.

Mentoring Program Policy (cont.)

§ 7. Funding for the Program

Each agency is to ensure that appropriate resources are utilized to allow the program to succeed. Based upon availability of funds, agencies may consider an In-Range Adjustment due to job changes for employees serving as mentors in accordance with the agency's mentoring program guidelines.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

It is compliant with the Administrative Code rules at:

- 25 NCAC 01K .0801-.0805

§ 9. History of This Policy

Date	Version
January 1, 2005	• New policy for implementing mentoring programs.
February 1, 2005	• Insert paragraph on "Purpose" which was inadvertently omitted
August 6, 2020	• Policy reviewed by Deputy Director – Recruitment and Rewards Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on August 6, 2020. • Change section titled "Program Administration" to "Policy" • Create separate section and paragraph for "Program Administration" • Add updated list of protected classes under "Policy" and "Participation" • Include (4) new and (2) updated terms under "Definitions" • Include "engagement" and "knowledge sharing" as agency needs under "Program Administration" • Add (4) mentorship options under "Program Curriculum"

Military Leave Policy

Contents:

Statutory Authority

This regulation is promulgated pursuant to North Carolina General Statute 127A-116 and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Policy

Leave shall be granted to employees of the State for certain periods of service in the uniformed services. No agent or employee of the State shall discriminate against any employee of the State or applicant for State employment because of their membership,

Military Leave Policy (cont.)

application for membership, performance of service, application for service or obligation for service in the Uniformed Services.

Policy Scope

Covered Service

Following are definitions of terms used in this policy:

Service in the Uniformed Service[1]: The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- active duty (extended active duty; mobilization or call up of reserve components),
- active duty for training of reserve components (annual training - usually 2 weeks or special schools),
- initial active duty for training (initial enlistment in reserve or National Guard),
- inactive duty training (drills - usually on weekends),
- full-time National Guard (usually a 3-year contract),
- State active duty for a period of 14 days or more,
- State active duty in response to a national emergency declared by the President under the National Emergencies Act,
- State active duty in response to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,
- a period for which a person is absent to determine fitness of the person to perform such duty,
- a period for which a System member of the National Urban Search and Rescue Response System (NUSRRS) is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,
- a period for which a person is absent from a position of employment due to an appointment into service in the Federal Emergency Management Agency (FEMA) as intermittent personnel under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5149(b)(1)),
- service in or training for the National Disaster Medical System (NDMS), and

[1] 38 U.S.C.§ 4303(13)

Military Leave Policy (cont.)

- a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

Uniformed Services[2]:

- Armed Forces and the Reserve Components (Army, Navy, Air Force, Marine Corps, Coast Guard, Army and Air National Guard),
- Commissioned Corps of the Public Health Services,
- System members of the National Urban Search and Rescue Response System (NUSRRS) during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,
- Intermittent personnel who are appointed into Federal Emergency Management Agency (FEMA) service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) or to train for such service,
- National Disaster Medical System (NDMS) intermittent disaster response appointees, and
- any other category of persons designated by the President in time of war or national emergency.

National Guard: A reserve of the U.S. Armed Forces. The N.C. Army and Air National Guard respond to the Governor as Commander in Chief and serve as the military arm of State government and respond to the President of the U.S. in time of war.

Also included are the Civil Air Patrol and State Defense Militia in accordance with the Special Provisions outlined at the end of this policy

Covered Employees: Full-time or part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for military leave.

- Temporary and part-time (less than half-time) are not eligible for military leave.
- Although temporary employees are not eligible for military leave benefits, they are covered under the reinstatement policies.

[2] 38 U.S.C. § 4303(17)

Military Leave Policy (cont.)

Types of Military Leave

The policy and guidelines that follow are presented in six different sections to differentiate between the benefits applicable to the different types of leave. The sixth section covers reinstatement.

Section 1 - Active Duty Training and Inactive Duty Training

Section 2 - Physical Examination

Section 3 - Reserve Active Duty

Section 4 - Extended Active Duty and Other Military Leave without Pay

Section 5 - Civil Air Patrol and State Defense Militia

Section 6 - Reinstatement

SECTION 1 - ACTIVE DUTY TRAINING AND INACTIVE DUTY TRAINING

Leave Options

Leave with pay, up to a maximum of 120 hours each Federal fiscal year (Oct.-Sept.), prorated for part-time employees, shall be granted to members of the uniformed services for:

- active duty for training (annual training or special schools, including an authorized training program for the NDMS or FEMA)
- inactive duty training (drills - usually on weekends)

If the drill is not scheduled on the employee's off-day, the employee has the option of requesting that the work schedule be rearranged, or the employee may use any unused portion of the 120 hours leave with pay, vacation/bonus leave or leave without pay.

Additional military leave needed for training shall be charged to vacation/ bonus leave or leave without pay at the discretion of the employee.

When a military obligation is less than 31 days an employee is authorized eight (8) hours recoup time before and after performance of military duties or military training. This time may also be charged to the 120 hours leave with pay, leave without pay or vacation/bonus leave. Example: An employee may be scheduled on a Friday, to take a convoy to a specific site. If significant travel is required, the employee may need to be released early on the day before training in order to accommodate the request for travel and reasonable rest. The employee is to return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an 8 hour rest period.

Military Leave Policy (cont.)

Agencies using BEACON HR/Payroll System:

If an employee has holiday compensatory time, overtime compensatory time, gap hours compensatory time, on-call compensatory time or travel compensatory time, it shall be taken before vacation/bonus leave.

Notification

The employing agency may require the employee to provide notification of upcoming duty and/or schedule changes as soon as known.

SECTION 2 – PHYSICAL EXAMINATION

Leave With Pay for Physical Examination

Leave with pay shall be granted for a required fitness examination relating to service in the uniformed services.

SECTION 3 – RESERVE ACTIVE DUTY

Compensation

The following shall apply for:

- Each period of involuntary service when ordered to State or Federal active duty,
- Or the following types of service, which are also deemed involuntary service in the uniformed services under this policy:
  - Service as an intermittent disaster-response appointee upon activation of the NDMS,,
  - An appointee to federal service as a member of NUSRRS under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or
  - An appointee to FEMA service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)).[3]
    (1) Members shall receive up to thirty (30) calendar days of pay based on the employee's current annual State salary.

[3] See N.C.G.S. § 127A-116.

Military Leave Policy (cont.)

This includes special activities of the National Guard, usually not exceeding one day, when so authorized by the Governor or his authorized representative.

(2) After the thirty-day period, members shall receive differential pay for any period of involuntary service. This pay shall be the difference between military basic pay and the employee's annual State salary, if military pay is the lesser.

When attending special activities of the National Guard, members shall receive up to one day of pay, when attendance at the special activity is authorized by the Governor or his authorized representative.

It is generally assumed that an employee had at least satisfactory performance when placed on military leave; therefore, any legislative increases or applicable labor market adjustments should be included in the differential pay. The addition of career growth adjustments or performance bonuses is determined in the same manner as any employee on leave without pay. If an employee was otherwise not entitled to any benefits conferred by law because of unsatisfactory job performance supported by the previous rating on a performance appraisal, the employee does not become eligible to receive those benefits simply by being placed on military leave.

Notification Required for Full Pay or Differential Pay

The employing agency shall require the employee, or an appropriate officer of the uniformed service in which such service is performed, to provide written or verbal notice of any service.

For periods eligible for military leave with differential pay, the agency shall require the employee to provide a copy of their Leave and Earnings Statement or similar document covering the period eligible for differential pay.

Leave Options

Prior to the 30 days of full pay and the differential pay, the employee may choose to have accumulated vacation/bonus leave paid in a lump sum (maximum of 240 hours of vacation leave), exhausted, or retained (part or all) until return. The employee shall retain any unused sick leave.

FLSA Subject employees may exhaust any compensatory time prior to exhausting leave or it may be paid in a lump sum. FLSA Not Subject employees may exhaust compensatory time in accordance with the provisions in the Compensatory Time Policy prior

Military Leave Policy (cont.)

to exhausting leave with approval of the supervisor, consistent with the policy; however, it may not be paid out in a lump sum.

Benefits

Service Credit: During the period of reserve active duty, whether receiving full State pay, differential pay, or no pay, the employee shall not incur any loss of total State service.

Longevity - If eligible, the employee shall continue to be paid longevity payments during the period of reserve active duty.

Leave: The employee shall continue to accumulate sick and vacation leave. If the employee does not return to State employment, vacation leave earned while on reserve active duty will be paid in accordance with the Vacation Leave Policy.

Retirement: The employee shall receive retirement service credit for periods of service authorized in the Retirement System statute. (See Retirement System Handbook for further details.)

Effective July 1, 2009, differential pay meets the statutory definition of "compensation" for retirement purposes. Thus, retirement contributions should be reported to the Retirement System on differential pay.

Health Insurance: When on State duty, the State continues to pay for health coverage for members of the National Guard. When on Federal active duty, the State will pay for coverage in the State Health Plan for at least 30 days from the date of active service pursuant to the orders. Partial premiums are not accepted; therefore, if a full premium is paid to cover a partial month, coverage will also continue to the end of that month. If the employee chooses to exhaust vacation leave, the State also pays for coverage while exhausting leave. The member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter.[4] The member cannot be required to pay more than 102% of the full premium for the coverage.[5]

[4] A Guide to the Uniformed Services Employment and Reemployment Rights Act; 38 U.S.C. § 4317; 20 C.F.R. § 1002.164; 20 C.F.R. § 1002.166

[5] This is similar to benefits a former state employee would be eligible for under COBRA.

Military Leave Policy (cont.)

SECTION 4 – EXTENDED ACTIVE DUTY AND OTHER MILITARY LEAVE WITHOUT PAY

Periods Eligible

Military leave without pay shall be granted for all uniformed service duty that is not covered by military leave with pay defined in Sections 1-3. Among the reasons are:

(1) Initial active duty for training (voluntary initial enlistment);

(2) Extended active duty (voluntary) for a period not to exceed five years plus any additional service imposed by law (see Advisory Note on next page);

(3) Full time National Guard duty (usually a voluntary 3 year contract);

(4) While awaiting entry into active duty, such period as may be reasonable to enable the employee to address personal matters prior to such extended active duty;

(5) The period immediately following eligible period(s), as defined under “Reinstatement” of this policy, while reinstatement with State government is pending, provided the employee applies for such reinstatement within the time limits defined. (It is the employee’s responsibility to apply for reinstatement within the time limit defined.);

(6) Employees hospitalized for, or convalescing from, an injury or illness incurred in, or aggravated during the performance of extended active duty, except that such period shall not exceed two years beyond their release from extended active duty under honorable conditions. Also, the employee shall be entitled to leave without pay for the period from the time of release by the physician until actually reinstated in State employment, provided the employee applies for such reinstatement within the time limits defined;

(7) Duties resulting from disciplinary action imposed by military authorities; and

(8) Inactive duty training (drills) performed for the convenience of the member, such as equivalent training, split unit assemblies, make-up drills, etc.

Agencies are not required to excuse an employee for incidental military activities such as volunteer work at military facilities (not in duty status), unofficial military activities, etc., unless otherwise permitted by this policy.

The following types do not count toward the cumulative 5-year limit of military service a person can perform while retaining reemployment rights[6]:

[6] See 20 C.F.R. § 1002.99 - .103 for full explanation of the additional categories of service (eight total) that are exempt from the five-year limitation.

Military Leave Policy (cont.)

(1) Unable (through no fault of the individual) to obtain release from service or service in excess of 5 years to fulfill an initial period of obligated service,
(2) Required drills and annual training and other training duty certified by the military to be necessary for professional development or skill training/retraining, or
(3) Service performed during time of war or national emergency or for other critical missions/contingencies/military requirements.

Notification

The employing agency shall require the employee, or an appropriate officer of the uniformed service in which such service is performed, to provide written or verbal notice of service.

Leave Options

Prior to going on LWOP, the employee may choose to have accumulated vacation/bonus leave paid in a lump sum (maximum of 240 hours of vacation leave), exhausted, or retained (part or all) until return. The employee shall retain any unused sick leave.

FLSA Subject employees may exhaust any compensatory time prior to exhausting leave or it may be paid in a lump sum. FLSA Not Subject employees may exhaust compensatory time in accordance with the provisions in the Compensatory Time Policy prior to exhausting leave with approval of the supervisor, consistent with the policy; however, it may not be paid out in a lump sum.

Benefits

Service Credit: During periods eligible for military leave without pay, the employee shall continue to earn time toward total State service if reinstated within the time limits outlined in the Reinstatement Section.

Longevity: If eligible, employees shall receive a longevity payment computed on a prorata basis prior to leave without pay . The balance will be paid when the employee returns from military leave and completes a full year. Then, a full payment will be made on the employee’s longevity date that was established before going on leave without pay. The period of time an employee is on unpaid military leave or on military leave for a reason other than reserve active duty is considered as time worked for the purpose of qualifying for a higher longevity pay.

Military Leave Policy (cont.)

Leave: The employee shall not accumulate vacation or sick leave. Leave is earned only when the employee is on leave with pay or on reserve active duty. However, the period of time an employee is on unpaid military leave or on military leave for a reason other than reserve active duty is considered as time worked for the purpose of qualifying for a higher leave accrual.

Retirement: The employee shall receive retirement service credit for periods of service authorized in the Retirement System statute. (See Retirement System Handbook for further details.)

Health Insurance: The State will pay for coverage in the State Health Plan for at least 30 days from the date of active service pursuant to the orders. If the employee chooses to exhaust vacation leave, the State also pays for coverage while exhausting leave. Partial premiums are not accepted; therefore, if a full premium is paid to cover a partial month, coverage will also continue to the end of that month. The member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter. The member cannot be required to pay more than 102% of the full premium for the coverage.

SECTION 5 – CIVIL AIR PATROL AND STATE DEFENSE MILITIA

Civil Air Patrol

While the Civil Air Patrol is not a reserve component, it is an auxiliary to the Air Force. Its members are not subject to obligatory service. When performing missions or encampments, authorized and requested by the U.S. Air Force or emergency missions for the State at the request of the Governor or the Secretary, Department of Crime Control and Public Safety, its members are entitled to military leave with pay not to exceed 120 hours (prorated for part-time employees) in any calendar year. Exceptions may be granted by the Governor. Such service may be verified by the Secretary of the Department of CCPS upon request by the employing agency. Regularly scheduled unit training assemblies, usually occurring on weekends are not acceptable for military leave, however, employing agencies are encouraged to arrange work schedules to allow employees to attend this training.

Military Leave Policy (cont.)

State Defense Militia

The State Defense Militia is considered a reserve to the National Guard, but it is not a reserve component of the U. S. Armed Forces. Its members are not subject to obligatory service unless they are assigned to a unit that is ordered or called out by the Governor. Only under the following conditions are State employees entitled to military leave with pay:

- infrequent special activities in the interest of the State, usually not exceeding one day, when so ordered by the Governor or his authorized representative
- State duty for missions related to disasters, search and rescue, etc., again, only when ordered by the Governor or his authorized representative.

Under these conditions, an employee may be granted military leave not to exceed 120 hours (prorated for part-time employees) during any calendar year.

State employees who are members of the State Defense Militia are not entitled to military leave with pay when volunteering for support of functions or events sponsored by civic or social organizations even though such support has been “authorized.”

Regularly scheduled unit training assemblies, usually occurring on weekends, are not acceptable for military leave; however, employing agencies are encouraged to arrange work schedules to allow the employee to attend this training.

Duty status may be verified with:

The Office of the Adjutant General,
North Carolina National Guard,
ATTN: Vice Chief of Staff - State Operations (VCSOP).

Military Leave Policy (cont.)

SECTION 6 – REINSTATEMENT

Reinstatement

The agency is required to provide the same treatment that would have been afforded had the employee not left to perform uniformed service. (This includes temporary employees.)

Reinstatement shall be made if the employee reports to work or applied for reinstatement within the established time limits, unless the service was terminated by the occurrence of either of the following:

(1) A separation with a dishonorable or bad conduct discharge.

(2) A separation under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary of the applicable military branch..

Employees who resign to enter military service without knowledge of their eligibility for leave without pay and reinstatement benefits, but who are otherwise eligible, shall be reinstated as if they had applied for this benefit.

Time Limits

The employee shall be responsible for returning, or making application for reinstatement, within the time limits defined below.

The time limit for submitting an application for reemployment or reporting back to work depends upon the length of uniformed service. If reporting back or submitting an application for reemployment within the specified periods is impossible or unreasonable through no fault of the employee, the employee must report back or submit the application as soon as possible thereafter. If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, they must report back or submit an application for reemployment at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the employee's control that make reporting within the period impossible or unreasonable.[7] The service duration and periods for returning or applying for reemployment are as follows:

[7] 20 C.F.R. § 1002.116

Military Leave Policy (cont.)

- less than 31 days, must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an 8 hour rest period;
- more than 30 days but less than 181 days, must submit a written or verbal application for reemployment with the agency not later than 14 days after the completion of the period of service; or,
- more than 180 days, by submitting a written or verbal application for reemployment with the agency not later than 90 days after the completion of the period of service.

Reinstatement Position

Reinstatement shall be to the position they would have likely achieved had they remained continuously employed (escalator position); or, if the period of uniformed service was in excess of 90 days, their escalator position, or one of like seniority, status and pay with the same agency or with another State agency. In the case of reemployment, such reemployment is to be promptly effective.

If the employee was serving their probationary period at the time they began military leave, they will be required to complete the remaining portion of his or her probation if there is a need for actual training and/or observation instead of merely time served in the position. However, once the employee completes the remaining portion of the probationary period, under the escalator principle, the subject employee's permanent status should be awarded retroactively to the date they would have attained permanent status had it not been for their active military service.[8]

If, during military service, the employee suffers a disability incurred in, or aggravated during, uniformed service, to the extent that the duties of the escalator position cannot be performed, the agency must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of their escalator position. If the employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the agency to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

[8] 70 Fed. Reg. 75246 at 75272 (Dec. 19, 2005).

Military Leave Policy (cont.)

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.[9]

The employer must make reasonable efforts to accommodate the employee's disability and to help them to become qualified to perform the duties of one of these positions.[10]

Reinstatement Salary

The employee's salary upon reinstatement shall be based on the salary rate applicable to the proper escalator position and must include any salary increases the employee would have received but for the military leave, such as legislative increases or applicable labor market adjustments.[11] In no case will the reinstated employee's salary be less than when placed in a military leave status. If the employee was in a trainee classification at the time of military leave, the addition of trainee salary increases may be considered, at the discretion of the agency head, if it can be determined that military experience was directly related to development in the area of work to be performed in the State position. The addition of trainee increases must be made if it can be shown that progression within or through such status is based merely upon the passage of time with satisfactory performance. If the employee is not eligible for the trainee increases immediately upon reinstatement, upon completion of any requirements, the trainee increases must be provided retroactive to the date the employee was reinstated from military leave. If a passing score on a skill and/or knowledge assessment is required to receive a trainee increase the returning service member shall be provided a reasonable amount of time to prepare for and take the assessment after their reinstatement. Further, the employee's permanent status should be awarded retroactively to the date they would have attained permanent status had it not been for their active military service.[12]

[9] 20 C.F.R. § 1002.225
[10] 20 C.F.R. § 1002.226
[11] 20 C.F.R. § 1002.193(a)
[12] 20 C.F.R. § 1002.193(b); 70 Fed. Reg. 75246 at 75272 (Dec. 19, 2005).

Military Leave Policy (cont.)

It is assumed that an employee had at least satisfactory performance when placed on military leave; therefore, any cost-of-living adjustment should be included in the reinstatement pay.

Federal law requires employers to notify employees of their rights under the Uniformed Services Employment and Reemployment Rights Act. This requirement may be met by displaying a poster at the location where employers customarily place notices for employees. The poster developed by the U. S. Department of Labor may be found at the following web site: http://www.dol.gov/vets/programs/userra/poster.htm

Sources of Authority

- N.C.G.S. § 126-4(5), § 127A-116 and the Uniformed Services Employment and Reemployment Rights Act of 1994

  It is compliant with the Administrative Code rules at:
- 25 NCAC 01E .0800

History of This Policy

Date	Version
July 1, 1950	• Regulations governing military leave approved.
October 1, 1959	• Military leave with and without pay adopted.
December 15, 1969	• An employee may be granted necessary time off as administrative leave, when required for examination, to determine physical fitness to enter military service.
January 1, 1973	• Added the words “or members of the Civil Air Patrol performing emergency assignments for the State” under Emergency or Special Duty Assignments.
January 7, 1976	• Changes maximum leave with pay time allowed for annual active duty from 15 to 16 calendar days each year; provides leave with pay for unannounced practice alerts, provides differential pay for full-time training duty in support of the N. C. Military Academy when ordered to duty, grants leave with pay for infrequent special activities, places limit of 30 days on leave with pay for active

Military Leave Policy (cont.)

	State duty and grants up to one month of military leave without pay for attendance at service schools.
September 1, 1976	• Differential pay between military pay and State pay for full-time training duty when in addition to annual active duty for training. • An employee may elect to use 96 hours or less of military leave with pay for service school attendance which time shall count as military leave with pay in lieu of attendance at annual active duty for training.
May 1, 1977	• Added permanent part-time employees to policy. • Added to Unacceptable Periods “regularly scheduled unit assemblies usually occurring on weekends and referred to as drills.” • Adds the word “required” when granting leave without pay for attendance at a service school. • Allows that annual leave be exhausted or paid in a lump sum for Initial Active Duty Training in the Reserve and for Extended Active Duty. Further it allows that annual leave may be exhausted or may be retained for future use for Attendance at Service Schools and for Extended Annual Active Duty.
March 1, 1978	• Authorized military leave from any of the governmental units for which service credit is granted, provided the employee is reinstated within the time limits outlined in the state military leave policies. • Included options for using annual leave or retaining.
August 1, 1979	• Members of Armed Forces reserve components entitled to leave with pay up to 15 calendar days. Members of Army or Air National Guard entitle to leave with pay when ordered for emergency or special duty.
December 1, 1980	• Leave for military training and State Duty as designated by Governor, Military leave with differential pay and without pay.

Military Leave Policy (cont.)

	• Clarified that military leave without pay is available for one voluntary enlistment at any time (not just in lieu of being drafted) as required by federal law.
June 1, 1981	• Military leave with pay should be prorated for part-time employees and employees working a seven-day operation shall have their schedules rearranged when necessary to permit the person to be off on the weekends for drill.
November 1, 1990	• Added State Defense Militia as National Guard component in accordance with law.
October 1, 1992	• The amount of military leave with pay for active military duty training has been changed from 96-120 hours. • Although "drills usually occur on weekends, there are times when employees must leave on Friday to take convoys to training sites, provision has been added that will allow some of the 120 hours to be used for this purpose if it is available. • The provisions for duty with Civil Air Patrol and for members of the State Defense Militia have been moved to the end of the policy so that it will not be confused with the provisions for reserve components of the U.S. Armed Forces. • The provisions for the Civil Air Patrol have not changed, except to increase the maximum amount to 120 hours.
October 1, 1992	• Military leave with pay, up to 120 hours, for the State Defense Militia will cont'd be allowed only when ordered by the Governor or his authorized representative for special activities or for missions related to disasters, search and rescue, etc. This can be verified with the Office of the Adjutant General.
August 1, 1995	• Changes the terminology to "permanent, probationary, trainee appointment" rather than "permanent, probationary, trainee employment." In addition, "time-limited" appt has been spelled out in the appropriate policies, whereas, in the past, this type of appt was considered to be a type of "permanent" appt.

Military Leave Policy (cont.)

October 1, 1998	• Revisions mainly to implement the provisions of The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Changes required by law: • Includes terminology used in the USERRA and defines what is included in the Uniformed Services and what is considered as service in the Uniformed Services. • Notification of service is required at the earliest opportunity and may be a written or verbal notice by the employee or an appropriate officer of the uniformed service. • Employee has option of requesting a change in work schedule if drill is not scheduled on the employee's off-day; the agency cannot require employee to change schedule. • Time limit for reporting back to work depends upon the length of uniform service. • May elect to continue employer-sponsored health care for a period of up to 18 months. • Expands to 5 years the cumulative length of time that an individual may be absent and retain reemployment rights. • Service members convalescing from injuries received during service or training may have up to two years to return to their job. Changes not required by law: • Leave with pay is not allowed on initial active duty for training. Employee may use all or part of the 120 hours of leave with pay when ordered to Federal active duty (mobilization).
September 1, 2001	• Revised to conform to House Bill 231, Sections 23.(a) and 23.(b) that rewrote G.S. 127A-116 to provide for leaves of absence without loss of pay, time or efficiency rating for federal military duty. Provided for 30 days full pay and differential pay if military pay is less than state pay. • Also rescinded the provision for using the 120 hours for active duty. It can only be used for training.

Military Leave Policy (cont.)

September 1, 2002	• Revised to clarify that 120 hours leave with pay is granted each Federal fiscal year (Oct-Sept).
September 30, 2002	• Revised to clarify that 120 hours leave with pay is granted each Federal fiscal year (Oct-Sept).
March 1, 2003	• Policy format rearranged for clarification. • Health insurance coverage clarified. • Correction under Reinstatement Position from “180 days” to “90 days.”
June 1, 2003	• Note added to clarify that although temporary and intermittent employees are not eligible for pay and leave benefits, they are entitled to reinstatement rights.
August 1, 2004	• Deleted Advisory Note under Compensation since the temporary rule has become permanent.
October 1, 2004	• Added provisions for the National Disaster Medical System rule providing for differential pay has become a permanent rule.
March 1, 2005	• Add Advisory Note regarding the requirement for employers to provide notification to employees about their rights under the USERRA.
January 1, 2008	• Advisory Note added for agencies using BEACON HR/Payroll System: • If an employee has holiday compensatory time, overtime compensatory time or on-call compensatory time, it shall be taken before sick leave. • Hours worked in excess of the employee’s established work schedule will be used to offset leave reported in the same overtime period. Leave will be restored to the employee’ uses balance for later.
July 1, 2009	• Revised Advisory Note to add gap hours compensatory time and travel compensatory time to leave hierarchy used in the BEACON HR/Payroll System.

Military Leave Policy (cont.)

July 1, 2009	• Changes made to conform to the retirement legislation which authorizes differential pay to be considered as compensation for retirement purposes.
January 1, 2011	• Advisory Note about Leave Offsetting deleted and placed in General Leave Policies.
January 1, 2012	Note from January 2012: • To ensure compliance with G.S. 135-45.12(a)(5) [now G.S. 135-48.44(a)(5)] and G.S. 135.44- 12(d)(2) the health insurance provisions of the policy was changed to remove the statement that an employee may choose to continue health insurance coverage in the State Health Plan by paying the full premium. Also, portions of the policy previously identified as “notes” or “advisory notes” are no longer referenced as “notes” but are now written as policy. Note on the 2012 change added in July 2024: • The 2012 change missed the requirement for health coverage under federal law in Section 4317(a)(1)(A) of USERRA, 38 U.S.C. § 4317(a)(1)(a), along with the Health Plan statute at G.S. 135-48.4, which states, “If any provision of this Article is in conflict with applicable federal law, federal law shall control to the extent of the conflict.” Therefore, the January 2012 change on health insurance was reversed in July 2024.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointment types and career status.
July 11, 2024	• Added footnotes with citations to federal guidance throughout the policy. • The definitions of “Service in the Uniformed Service” and “Uniformed Services” were updated to include all types of service and uniformed services listed in the US Code. • In Section 3, entitled “Reserve Active Duty”: o The provision entitled “Compensation” was reformatted and updated. ▪ Pursuant to the federal USERRA law, added appointment to federal service as a member of the National Urban Search and Rescue Response System

Military Leave Policy (cont.)

	(NUSRRS) and appointee to Federal Emergency Management Agency (FEMA) service to the types of service eligible for the compensation detailed in this section. o Changed the reference to “cost of living adjustment” to “legislative increase” and added a reference to labor market adjustment as types of pay adjustments that should be included in the compensation detailed in this section. o In the provision entitled “Leave Options,” added a reference to FLSA Not Subject employees utilizing compensatory time in accordance with the Compensatory Time policy. o In the provision entitled “Benefits,” for compliance with USERRA, added language that states “a member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter. The member cannot be required to pay more than 102% of the full premium for the coverage.” • In Section 4, entitled “Extended Active Duty and Other Military Leave Without Pay”: o In the provision entitled “Leave Options,” added the same language as in Section 3 about FLSA Not Subject employees utilizing compensatory time in accordance with the Compensatory Time policy. o In the provision entitled “Benefits,” added explanatory language to the Longevity and Leave provisions that clarifies period of time an employee is on unpaid military leave or on military leave for a reason other than reserve active duty is considered as time worked for the purpose of qualifying for a higher longevity pay and higher leave accrual. o In the provision entitled “Health Insurance,” added the same language as in Section 3 clarifying “a member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter. The member cannot

Military Leave Policy (cont.)

	be required to pay more than 102% of the full premium for the coverage." • In Section 6, entitled "Reinstatement": o Removed obsolete reference to the intermittent employee type. o In the provision entitled "Time Limits," added information related to hospitalization or recovery of an employee and the time they have to return to employment following a service related illness or injury. o In the provision entitled "Reinstatement Position," added: ▪ A paragraph on how to handle reinstatement of an employee who was in their probationary period when they went out on leave, and ▪ Language to clarify the employer obligation when reinstating a service member who was disabled during military service. o In the provision entitled "Reinstatement Salary": ▪ Added language to clarify the reinstatement salary should include any salary increases the employee would have received but for the military leave, such as Legislative Increases or Labor Market Adjustments. • Expanded the explanation of how an employee who was in a trainee classification at the time they began military leave should be treated upon reinstatement.

New Appointment Policy

Contents:

§ 1. Definition

A new appointment is the initial employment of an individual to a position in State government.

Note: Employees transferring from a career-banded classification to a graded classification should be treated as a Grade-Band Transfer action and the salary established using the Pay Administration Policy.

§ 2. Types of Appointments

An employee entering into State service shall be given one of the following types of appointments: (See Appointment Types and Career Status Policy located in Section 3 of the State Human Resources Manual for discussion of requirements.)

Type of Appointment	Condition
Probationary	if the employee is qualified for the permanent position.
Time-limited	if to a time-limited position or to fill a permanent position vacant due to the incumbent's leave of absence.
Temporary	if for a specified period not to exceed twelve months.

§ 3. Qualifications

The employee must possess at least the minimum recruitment standards, or their equivalent, as set forth in the class specification. Exception: See the section in the Pay Administration Policy on trainees.

New Appointment Policy (cont.)

§ 4. **Establishing Salary**

The salary of the newly appointed employee will be determined under the steps in the Pay Administration Policy. Documentation for the salary must be established under the procedures in the Pay Administration Policy.

§ 5. **Effective Date**

A new employee may begin work on any scheduled workday in a pay period. When the first day of a pay period falls on a non-workday and the employee begins work on the first workday of a pay period, the date to begin work will be shown as the first of the pay period.

The effective date for change to a permanent appointment shall be the date that it is determined that the employee meets acceptable performance standards, but not less than twelve (12) months from the date of employment. (See the Appointment Types and Career Status Policy in Section 3 of the State Human Resources Manual.)

§ 6. **Sources of Authority**

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2),(5),(6)
- 25 NCAC 01D .0200

§ 7. **History of This Policy**

Date	Version
May 16, 1960	First version - New policy Minimum rate of pay for a class shall be paid upon permanent appointment. Rates above minimum for new appointment under certain conditions and new appointments may be made above the minimum rate but not to exceed the 3rd step.
November 11, 1975	Approved new policy restating purpose of Trainee Appointments and added provisions for advanced salary progression.
January 1, 1976	Removed restriction of not paying rates higher than the third step in order to compete in the labor market in critical areas, and included requirement that all temporary employees shall be paid on hourly

New Appointment Policy (cont.)

	rates. Included requirement that all temporary employees be paid on hourly basis.
August 1, 1978	Salary Increases for Provisionals. Policy provided for the employee's salary to be increased to step one at the end of the normal probationary period, but the employee would not be given a permanent appointment until all other requirements had been met.
January 1, 1989	Pay status changed to half the workdays and holidays. Month changed to pay period.
January 1, 1990	Revised to conform to new pay plan - deleted reference to steps.
September 1, 1991	"Directly" added to related experience; also not to exceed midpoint of range without approval of State Personnel Director.
March 1, 1994	Revised to allow an increase at the end of the probationary period regardless of the initial salary rate, provided the employee qualifies for the permanent salary rate requested. Revised to allow the change from probationary to permanent to become effective on the date that it is determined that the employee meets acceptable performance standards, but not less than three months from the date of employment.
July 1, 1995	Changes the terminology to "permanent, probationary, trainee appointment" rather than "permanent, probationary, trainee employment." In addition, "time-limited" appointment has been spelled out in the appropriate policies, whereas, in the past, this type of appointment was considered to be a type of "permanent" appointment.
June 1, 2003	Advisory Note added to clarify that upon reemployment, the type of appointment may be determined as a new hire; however, if reemployment occurs within one year, the salary must be determined in accordance with the Reinstatement Policy.
July 1, 2005	Revised to eliminate "hiring rate" and to change "special entry rate" to "special minimum rate."

New Appointment Policy (cont.)

January 1, 2007	Added Advisory Note to clarify how salary is set when transferring from a banded class to a graded class.
November 1, 2013	HB 834 – Modernization of the Human Resources Act change G.S. 126 to include a new definition for probationary period. The period changed from three to nine months to a consistent twenty-four months of continuous SHR employment in a permanent position. All new appointments shall serve a probationary period.
September 7, 2017	Policy revised to delete all references to trainee appointments, change to trainee classifications per appointment types and career status. The “Effective Date” section changed from 24 months to 12 months to align with probationary period. (page92) • Removed “appointment “and change to read “While in a trainee classification, the following shall occur.” Under Section Trainee Salary Increases (Page 92) Section header “Trainee Appointments” change to “Employees in Trainee Classifications” (page 92) Under section Trainee Salary Increases: • Added the following to align with Performance management policy: “Trainee salary adjustment shall be awarded if an employee has an unsatisfactory job performance rating. See the Performance Management Policy located in Section 10 of the State Human Resource Manual for additional information on how to address poor performance. Eligibility for trainee salary adjustments shall resume once the employees obtains a satisfactory performance rating as defined in the Performance Management Policy located in Section 10 of the State Human Resource Manual.” (page 93) [4-7] 3 • Amended: “After successful completion of the trainee period with a satisfactory performance rating, the salary shall be increased to the minimum (or SMR) or the range for the regular classification and the

New Appointment Policy (cont.)

	employee shall be reallocated from trainee classification to the regular classification." (page 93)
April 14, 2022 (effective June 1, 2022)	Text on setting salaries and on trainee classifications moved into new Pay Administration Policy. Removed material on special minimum rates, as that process has been replaced in the new Pay Administration Policy.
October 13, 2022	Modified language on appointments of time-limited employees to permanent positions to match the language of 25 NCAC 01C .0402 (which reads "…due to the incumbent's leave of absence…").

On-Call and Emergency Callback Pay Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina to provide additional compensation to designated FLSA Subject employees who are **required** to serve in on-call status and/or who are called back to work. (For FLSA Not Subject employees, see the paragraph entitled FLSA Not Subject at the end of this policy.)

Management should carefully weigh the costs and benefits of alternatives before authorizing on-call or emergency callback pay. Reasonableness and fairness shall be exercised in administering this policy.

§ 2. Definitions

On-Call: is when an employee must remain available to be called back to work on short notice if the need arises. Time spent by an employee who is required to remain on call on the employer's premises or so close thereto that the time cannot be used for the employee's own purposes is considered working time and must be compensated at the employee's regular rate of pay or overtime rate of pay. However, employees who are merely required to leave word as to where they may be reached are not working while on call in this sense.[1] Time spent responding to a call received while on-call is time worked.

[1] 29 C.F.R. § 785.17

On-Call and Emergency Callback Pay Policy (cont.)

Note: Leave time and on-call time cannot overlap. (This does not include holidays.) Example: During a 24-hour period, an employee may be on vacation for 8-hours and be on-call for no more than 16 hours in that day.

Emergency Callback: is when an employee has left the work site and is requested to respond on short notice to an emergency work situation to:

- avoid significant service disruption,
- avoid placing employees or the public in unsafe situations, or
- protect and/or provide emergency services to property or equipment,
- respond to emergencies with students, clients, inmates, patients, or residents.

Emergency callback may involve either:

- going back to work or
- responding via telephone/ computer.

§ 3. Designation of Classes/Positions

Based on sound business need, management at the agency shall:

- select job classes and/or individual positions that are subject to on-call and/or emergency callback, and
- submit such lists to the agency human resource director for approval.

The HR Director shall submit a list of the classes eligible for on-call, along with the rates paid, to the Office of State Human Resources. When a class is added or when a rate changes, a completely new list shall be submitted with the additions/changes specified.

Advisory Note: Positions previously designated to receive on-call/emergency callback compensation may be grandfathered and shall continue to be eligible for on-call and/or emergency callback at the same rate of compensation until specifically eliminated by the agency.

§ 4. Notification to Employees

Employees shall be notified in advance of being subject to on-call and emergency callback.

On-Call and Emergency Callback Pay Policy (cont.)

§ 5. Rate of On-Call Compensation

See Section 14 of the **Hours of Work and Overtime Compensation** policy for information on when an employee may be eligible for compensation at their regular rate of pay while on-call. In instances when an employee is not eligible for their regular rate of pay, agencies may provide on-call compensation at the rates noted below that may be in the form of pay or compensatory time. The rate of each shall be determined by the Office of State Human Resources based on survey data of prevailing practices in the applicable labor market.

The Office of State Human Resources shall report any on-call rate changes for the occupational groups or any exceptions to the Human Resources Commission.

Advisory Note: The current rate of $0.94 or other previously approved rates that are in effect will remain in effect or the agency may elect to change the rates based on the following:

On-Call Rate	Occupations
Up to $3.00 per hour (or 1 hour of compensatory time for every 8-hour shift)	Medical/Health Care Information Technology Skilled Trades
Up to $2.00 per hour (or 1 hour of compensatory time for every 8-hour shift)	Accounting Finance Clerical Office Services Legal and Administrative Management Information and Education Human Services Licensing and Inspection – Public Safety Institutional Services Engineering and Architectural Agricultural and Conservation

§ 6. Use of On-Call Compensatory Time for FLSA Subject

If compensatory time is used, it may be accumulated up to a maximum of 240 hours and shall be taken within twelve months from the date earned. If compensatory time

On-Call and Emergency Callback Pay Policy (cont.)

off is not given by the end of the twelve-month period, it shall be paid in the employee's next regular paycheck. The on-call pay shall be at the on-call rate applicable to that position.

§ 7. Overtime Pay for FLSA Subject

If an FLSA Subject employee works overtime while receiving on-call, the on-call pay must be included in calculating the employee's regular hourly rate for overtime pay. The time in on-call status is not included for determining overtime hours unless the employee is called back to work.

§ 8. Emergency Callback Compensation

§ 8.1. Emergency Callback – FLSA Subject

(1) Employees returning to work shall receive a minimum of two hours compensation as time off or additional pay at the straight-time rate of pay for each occasion of callback. The Office of State Human Resources may approve a higher rate of compensation if justified by labor market data.

(2) Employees responding via telephone/computer shall receive a minimum of 30 minutes as time off or additional pay at the straight-time rate for each occasion of callback. If more than one callback occurs within a given shift, total callback time cannot exceed two hours unless the work time exceeds two hours.

(3) If the time on callback is more than the two hours allowed, the employee shall be compensated for the actual time on callback.

(4) Management shall determine a reasonable time for which preparation and travel to the worksite shall be compensated.

(5) Shift pay, holiday pay and overtime pay shall be received in addition to emergency callback pay, if applicable. Time on callback is subtracted from the on-call hours.

(6) Employees whose work continues following the end of the regularly scheduled hours of work are not eligible for the callback.

(7) Time actually worked and travel to the worksite shall be included in hours worked for determining overtime hours.

On-Call and Emergency Callback Pay Policy (cont.)

(8) Emergency callback pay must be included in calculating the employee's regular hourly rate for overtime pay.

See examples on the following pages.

§ 8.2. Emergency Callback - FLSA Not Subject:

Exempt employees normally do not receive additional compensation for emergency callback or on-call. However, an agency that utilizes a Compensatory Time Policy for exempt employees may use it to provide time off.

If the agency head determines that temporary working or market conditions justify, they may work with the Office of State Human Resources to determine if an FLSA Not Subject position is temporarily eligible for on-call and/or emergency callback pay and the appropriate compensation, based on documented survey data of prevailing practice in the applicable labor market.

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§ 9. Separation or Transfer

For FLSA Subject employees, if on-call or callback time has not been taken off as compensatory leave, it shall be paid to employees upon separation or transfer to another agency. The on-call pay shall be at the on-call rate applicable to that position.

EXAMPLES:

Employee's hourly rate = $13.00

On-call rate approved by OSHR = $2.00

Example No. 1 – All emergency call-back occurred during on-call hours

On-call hours----------8 (Sunday – 8:00 a.m. – 4:00 p.m.

Hours emergency callback----------4 (Called back at 10:00 a.m.)

Hours on-call to be paid----------4 (On-call minus 4 hrs callback)

$13 x 44 (40 worked + 4 hours callback) = $572.00

$2 x 4 hours (on-call) = $ 8.00

$580.00/44 = $ 13.18

(Overtime rate)

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$13.18 x 4 (OT for callback) x .5 = $ 26.36 (plus longevity if applicable) Total Wages Earned $606.36

On-Call and Emergency Callback Pay Policy (cont.)

Example No. 2 – Part of emergency call back occurred during on-call hours

On-call hours----------8 (Sunday - 8:00 a.m. – 4:00 p.m.)
Hours on emergency callback-------4 (Called back at 3:00 p.m.)
Hours to be paid on-call----------7 (8 hrs minus 1 hr callback)

$13 x 44 (40 hrs worked + 4 hrs callback) = $572.00
$2 x 7 hours (on-call) = $ 14.00
$586.00/44 = $ 13.32
(Overtime rate)

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$13.32 x 4 (OT for callback) x .5 = $ 26.64 (plus longevity if applicable) Total Wages Earned $612.64

Example No. 3 – Less than 2 hours emergency callback

On-call hours 8
(Sunday - 8:00 a.m. – 4:00 p.m.)
Hours on emergency callback--2 (Called back at 1:00 p.m.; worked
1 hour and 30 min.)
Hours to be paid on-call---------6 (8 hours minus 2 hours minimum callback)

$13 x 42 (40 hrs worked + 2 hours callback) = $546.00
$2 x 6 hours (on-call) = $ 12.00
$558.00/42 = $ 13.29
(Overtime rate)

$13.29 x 1.5 (OT for callback) x .5 = $ 9.97 (plus longevity if applicable)

Total Wages Earned $567.97

On-Call and Emergency Callback Pay Policy (cont.)

Example No. 4 – Includes Shift Pay

On-call hours----------8 (Sunday - 3:00 p.m. –11 :00 p.m.)

Hours on emergency callback---4 (Called back at 5:00 p.m.)

Hours to be paid on-call----------4 (8 hours minus 4 hours callback)

$13 x 44 (40 hrs worked + 4 hours callback) = $572.00

$2 x 4 hours (on-call) = $ 8.00

Shift ($13 x 8 x 10%) = $ 10.40

$590.40/44 = $ 13.42

(Overtime rate)

$13.42 x 4 (OT for callback) x .5 = $ 26.84 (plus longevity if applicable) Total Wages Earned $617.24

§ 10. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01D .0200

§ 11. History of This Policy

Date	Version
February 1, 1987	First version - New policy.
August 1, 1987	Example added.
December 1, 1993	Added provision for on-call compensation for employees in criminal justice positions, which provide electronic house arrest immediate response services.
June 1, 2004	1) Combine the On-Call Compensation and Emergency Callback Policies. 2) Provide that both the classes eligible and the rates shall be based on documented survey data of prevailing practices in the applicable labor market. 3) Retain a minimum of 2 hours for emergency callback, with a provision that exceptions may be made if justified by labor market data.

On-Call and Emergency Callback Pay Policy (cont.)

July 1, 2004	Advisory Note added to incorporate the revised compensation rates for On-Call Pay outlined in our memo dated July 12, 2004.
January 1, 2007	Revised to clarify that compensatory time is paid at the on-call rate applicable to the position.
October 1, 2008	Clarified that FLSA exempt employees are normally not eligible for oncall pay and emergency callback. Compensatory time may be utilized or the agency may work with the Office of State Personnel to determine if the labor market would justify either for an FLSA exempt position.
April 1, 2009	Adds a note under the "Definitions" paragraph to clarify that leave time and on-call time cannot overlap. However, an employee may be on vacation during the 8-hour workday and still be on-call for the remaining 16 hours in the day.
July 11, 2024	• Added to Section 2, as part of the definition of "On-Call," words from the "Waiting Time" section (§ 14) of the proposed revised Hours of Work and Overtime Compensation Policy. These words describe whether time spent available to be called back to work is time worked under the Fair Labor Standards Act. • In Section 5 of this policy, added a cross reference to the same section of the Hours of Work and Overtime Compensation Policy. • Changed "FLSA non-exempt" to "FLSA Subject" and "FLSA exempt" to "FLSA Not Subject" throughout to match the Hours of Work and Overtime Compensation policy terminology.

Other Benefits Policy

Contents:

§ 1. Supplemental Retirement Plans

The State offers three Supplemental Retirement Plans, on a voluntary basis, to provide a way for an employee to save money for retirement and supplement state retirement benefits. Employees can make contributions through payroll deductions on either a pretax or Roth basis.

In accordance with the Internal Revenue Code, these plans have annual maximum contribution limits and, in some cases, contributions to one plan may affect contribution limits to another plan (i.e., 401(k) and 403(b) plans). An employee should consult Prudential Retirement Services (https://bit.ly/2Gzeox2) for more information about maximum contribution limits and coordination of plans.

§ 2. Supplemental Retirement Income Plan of North Carolina (NC 401(k) Plan) and North Carolina Public Employee Deferred Compensation Plan (NC 457 Plan)

The NC 401(k) Plan and NC 457 Plan are sponsored by the State of North Carolina and governed by the Department of State Treasurer and the Supplemental Retirement Board of Trustees. The plans offer a diversified selection of investment options (https://bit.ly/2S8qnD7) all of which receive strong, trusted oversight with respect to fees and fund performance. For more information on these plans and their features, consult http://ncplans.prudential.com.

Other Benefits Policy

§ 3. North Carolina Public School Teachers' and Professional Educators' Investment Plan 403(b) (NC 403(b) Program)

The NC 403(b) Program is a statewide voluntary 403(b) retirement program designed for public school and community college faculty and staff members. Participating school districts and community colleges may offer the NC 403(b) Program alongside their current 403(b) offerings, or as a sole option. This program is administered and governed by the Department of State Treasurer and the Supplemental Retirement Board of Trustees.

The NC 403(b) Program offers a diversified selection of investment options (https://bit.ly/2S8qnD7) all of which receive strong, trusted oversight with respect to fees and fund performance. For more information on this program's features and benefits, consult http://ncplans.prudential.com.

§ 4. Disability Income Plan of North Carolina

Eligible employees who become temporarily or permanently disabled and are unable to perform their regular work duties may receive partial replacement income through the Disability Income Plan of North Carolina (the Plan).

Employees are eligible if they:

- are permanent and work at least 30 hours per week for nine months of the year; and
- participate as a member of the Teachers' and State Employees' Retirement System for at least one year during the 36 months preceding the disability

There is a 60-day waiting period before benefits become payable by the plan. During this period, accumulated sick or vacation leave may be used.

The Department of the State Treasurer, Retirement Systems Division, has published a handbook detailing the benefits available under the plan. The handbook is available at: https://www.nctreasurer.com/ret/Benefits%20Handbooks/TSERS_DisabilityHandbook.pdf or by contacting the State Retirement Systems Division at: 1-877-NCSECURE (1-877627-3298).

§ 4.1. Short-Term Disability

Eligible employees may receive a monthly short-term benefit equal to:

- fifty percent (50%) of their monthly salary, plus
- fifty percent (50%) of their annual longevity.

Other Benefits Policy

Monthly benefits during the short-term period cannot exceed $3,000. This monthly benefit is reduced by any workers' compensation benefit received. Short-term benefits are available for up to one year and may be extended for up to one additional year if the disability is temporary and is likely to end within that additional year.

§ 4.2. **Long-Term Disability**

Long-term benefits are payable after the conclusion of the short-term disability period or after salary continuation payments cease, whichever is later. In order to qualify for longterm disability benefits, an employee must have at least five years of membership service with the Retirement System during the ninety-six months preceding the conclusion of the short-term disability period.

During the first three years of long-term disability, eligible employees may receive a monthly long-term benefit equal to:

- sixty-five percent (65%) of monthly salary, plus
- sixty-five percent (65%) of annual longevity pay

Monthly benefits during the long-term period cannot exceed $3,900. This amount is reduced by any Workers' Compensation (excluding permanent partial Workers' Compensation awards); any primary Social Security benefits, regardless of whether the employee elects to receive such benefits; and further reduced by any monthly payments from the federal Veteran's Administration, any other federal agency, or payments made under the provisions of General Statute 127A-108 to which the employee may be entitled if these payments are based on the same disability for which the employee is receiving plan benefits. However, the benefit will be no less than $10 a month.

After the first 36 months of the long-term disability period, the benefit is reduced by an amount equal to the primary Social Security benefit the member would be entitled had he or she been awarded Social Security disability benefits. Long-term benefits are payable to eligible employees until they become eligible to receive an unreduced service retirement under the North Carolina Teachers' and State Employees' Retirement System.

NOTE: If you had less than five (5) years of TSERS or ORP membership service as of July 31, 2007, your long-term benefits will end after you have received thirty-six (36) long-term disability benefit payments. If, however, you are approved for Social Security disability benefits, your DIPNC long-term disability coverage will continue.

Other Benefits Policy

§ 5. State Health Plan

A permanent state employee working at least 30 hours per week, may enroll in the State Health Plan. State employees working 20 or more hours, but less than 30 hours per week, may enroll, but must pay for the full cost of coverage.

The state pays for the majority of this benefit, with employees subsidizing the coverage for any dependents they choose to add to the plan. State agencies contribute nearly $500 to the health benefit of each permanent employee each month.

The State Health Plan offers two Preferred Provider Organization or PPO health plans administered by Blue Cross and Blue Shield of North Carolina. They are the 80/20 Plan and the 70/30 Plan.

For employee-only coverage, employees pay $25 on the 70/30 Plan, and $50 on the 80/20 Plan each month, if they complete a tobacco attestation, plus any dependent premiums, if they choose to cover dependents.

New employees must enroll themselves and any dependents within thirty (30) days of employment.

If an employee is no longer eligible for coverage, coverage for themselves and any dependents will end the last day of the month in which an ineligibility event occurs.

Employees may be eligible for continuation coverage under COBRA.

More information is available on the State Health Plan's website at: www.shpnc.org or by contacting the agency Health Benefits Representative or Human Resources Department.

§ 6. Legal Defense

State employees may be provided legal defense for any civil or criminal action or proceeding against them because of an act done or an omission made in the scope of their employment as a State employee. According to the provisions of the law, the Attorney General has the authority to determine whether the State will provide defense for the employee.

Other Benefits Policy

§ 7. Retirement System

The Teachers' and State Employees' Retirement System was created by the North Carolina General Assembly in 1941 and was established to provide retirement benefits for teachers and State employees in North Carolina. An employee with a permanent, probationary, time-limited or trainee appointment, who works at least thirty hours per week for nine months of the year, is automatically a member of the State Retirement System.

Employer and employee contribution percentages are established by the North Carolina General Assembly. The employee's current share of the cost is six percent of salary and is automatically deducted from the employee's paycheck on a before-tax basis.

An employee can retire with unreduced monthly benefits:

- At age 65 upon completion of five years of membership service in the Retirement System,
- At age 60 upon completion of 25 years of creditable service, or
- With 30 years of creditable service at any age.

An employee can retire with reduced monthly benefits:

- At age 50 upon completion of 20 years of creditable service, or
- At age 60 upon completion of five years of membership service.

Law Enforcement Officers can retire with:

- Unreduced benefits at age 55 with five or more years of creditable service as an officer or after 30 years of creditable service, at any age.
- Reduced benefits at age 50 with 15 years of creditable service as an officer.
- The General Assembly passed legislation in 2018 allowing state and local government agencies to offer separation buyouts to law enforcement officers who leave employment before reaching eligibility for the special separation allowance. Please refer to the appropriate law enforcement benefit handbook for details, which can be found at https://bit.ly/1dpJMEo.

Retirement benefits are fully vested after a member completes five years of membership service. Vesting means ownership of benefit in the assets held in your retirement account. Vesting does not mean that a member has immediate access to these assets, but merely that a member will not forfeit them upon termination of employment.

Other Benefits Policy

If a member leaves state employment before completing five years of membership service, he or she may:

- Request a refund of only the employee contributions, with such amount subject to any income taxes and early withdrawal penalties, unless the member requests a trustee-to-trustee transfer (direct rollover) of the refund to an IRA or another qualified plan that will accept the transfer, or
- Leave the contributions in the Retirement System in anticipation of a return to State service in the future.

A vested employee who terminates employment may elect to leave his or her contributions with the Retirement System and receive a retirement benefit starting at age 50 with at least 20 years of creditable service or, otherwise, at age 60.

§ 8. Death Benefit

If an employee should die while in active service while being paid salary (or within 180 days of the last day for which the employee is paid salary), after one year as a contributing member, the beneficiary will receive a single lump sum payment. The payment equals the highest consecutive 12 months' salary during the 24 months before the member's death, but no less than $25,000 and no more than $50,000.

The Department of the State Treasurer, Retirement Systems Division, publishes a handbook detailing retirement benefits. The book, "Your Retirement Benefits" is available via the Retirement Systems Division web site or through the agency benefits representative. https://www.nctreasurer.com/Retirement-and-Savings/Managing-MyRetirement/Pages/Benefits-Handbooks.aspx

§ 9. Social Security

Social Security is a program of Old Age, Survivor, Disability and Health Insurance benefits. The employee and the agency/university contribute the same amount of taxes each month (based on the employee's earnings) for Social Security (FICA) and Medicare up to a maximum taxable amount established by federal law. For more information, contact the local Social Security office or visit the website at: http://www.ssa.gov/planners/calculators.htm

Other Benefits Policy

§ 10. Supplemental Insurance Programs

State agencies and universities offer various supplemental after-tax insurance products to employees through private insurance providers. Each agency/university insurance committee is responsible for reviewing insurance products and determining whether or not they meet the needs of employees at the local level. The committees are also charged with competitively selecting the best insurance products that reflect the needs and desires of the employees they represent. Insurance products available at the local level may include life, dental, disability, accidental death and dismemberment, prepaid legal expenses, and others.

More information about these supplemental plans is available from the agency/university benefits representative.

§ 11. Sources of Authority

This policy is issued under any and all of the following sources of law:

- n/a

It is compliant with the Administrative Code rules at:

- n/a

§ 12. History of This Policy

Date	Version
September 1, 1976	Group Insurance • Policy on information on group insurance programs and information sources.
July 1, 1976	Legal Defense • Amendment to State Personnel Act to allow legal defense to state employees.
January 1, 2002	• Deletes reference to HMO's and updates other wording.
July 1, 2002	• Revised to correct the limit allowed for tax deferments.
June 1, 2003	• Revised to update and clarify the supplemental retirement programs.

Other Benefits Policy

October 1, 2007	• 1) Added information about PPO's. • 2) Added paragraph that explains that an employee who separates prior to the 16th of the month is not eligible for state health insurance coverage in the subsequent month.

Other Management Approved Leave Policy (OMAL)

Contents:

§ 1. Policy

In addition to the types of leave described in separate policies in this section of the Human Resources Manual, management may approve paid time off for employees to participate in specified state-related activities or because of natural or other emergencies. This policy summarizes the only acceptable reasons for approving other paid time off.

Note: Vacation, Sick, Adverse Weather, Civil, Community Service, Educational, Employee Transfer (relocating), Military, Workers' Compensation, Special Leave Awards and Communicable Disease Leaves are in separate policies.

§ 2. Coverage

This policy applies to full-time and part-time (half-time or more) employees who have a permanent, probationary, or time-limited appointment.

§ 3. Approval of Leave

Employee shall request Other Management Approved Leave at least two weeks before the leave is needed, unless such notice is impractical.

Other Management Approved Leave Policy (OMAL)(cont.)

§ 4. Work Time vs. Other Management Approved Leave

If an employee's job responsibilities include attendance at any of the activities/proceedings, attendance will be considered a work assignment and not leave and will, therefore, be included in hours worked for purposes of computing overtime for the Fair Labor Standards Act (FLSA) non-exempt employees.

§ 5. Non-Discretionary Types of Other Management Approved Leave

§ 5.1. Non-discretionary Types of Leave

An appointing authority shall grant leave with pay to an employee for any of the following purposes:

(1) to prepare for participation in his or her internal agency grievance procedure or mediation procedure (up to 8 hours – see Employee Appeals and Grievances);
(2) to place an employee on investigatory status (See Disciplinary Action, Suspension and Dismissal, Investigatory Placement With Pay.);
(3) to participate in contested case hearings, or other administrative hearings. (See Employee Appeals and Grievances Policy.);
(4) to locate and move to a new residence, within the limits allowed by policy, when a transfer is required by the agency (See Leave - Employee Transfer Policy - some mandatory and some optional.);
(5) to attend workers' compensation hearings;
(6) to serve on state commissions, councils, boards and committees (See Service on State Boards below);
(7) because of a smallpox vaccination (see Smallpox Vaccination below);
(8) to train for and compete in Pan American, Olympic or international athletic competition – up to 30 days a year as specified in N.C.G.S. § 126-8.1;
(9) to cover time that an agency is closed for emergencies. (See the Adverse Weather and Emergency Closings Policy.);

Other Management Approved Leave Policy (OMAL)(cont.)

§ 5.2. Service on State Boards

Leave with pay shall be granted for employees to fulfill their responsibilities as members of councils, commissions, boards and committees established by the General Assembly or other bodies established by the Governor and Council of State.

If an employee is required to attend any meeting as a part of the employee's job responsibilities, attendance will be considered a work assignment and not leave.

Employees may not accept fees for serving unless provided otherwise by law; but they may retain reimbursement for expenses incurred provided they are not reimbursed for the same expenses by their agencies.

§ 5.3. Smallpox Vaccination

When an employee receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, Section 304 of the Homeland Security and the absence is due to the employee having an adverse medical reaction resulting from the vaccination, absences shall be charged to Other Management Approved Leave:

- when the employee is vaccinated and has an adverse medical reaction, and
- when the employee is permanently or temporarily living in the home of a person who receives a smallpox vaccination and the absence is due to:
  - the employee having an adverse medical reaction resulting from exposure to the vaccinated person or
  - the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination.

These provisions apply for a maximum of 480 hours. The agency may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken.

Note: This policy implements the provisions of N.C.G.S. § 126-8.4.

Other Management Approved Leave Policy (OMAL)(cont.)

§ 6. Discretionary Types of Other Management Approved Leave

§ 6.1. Discretionary Types of Leave

An appointing authority may grant leave with pay to an employee for any of the following purposes:

(1) to participate in volunteer emergency and rescue services (see below);
(2) to participate in specialized disaster relief services with the American Red Cross (see below);
(3) to donate blood and bone marrow (see Blood and Bone Marrow and Organ Donorship below);
(4) to donate organs (up to 30 days – see below);
(5) to reward an employee for a suggestion that is adopted under the NC Thinks Program or under the agency's Governor's' Awards for Excellence Program (See Special Leave Awards Policy); and
(6) to attend conferences that are closely associated with an employee's work, but that are not required as a work assignment.

§ 6.2. Emergency Services

Agency heads are authorized to establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services. Each agency head is responsible for determining that a bona fide need for such services exists within a given area. A bona fide need should be defined as real or imminent danger to life or property.

Each policy should require:

- sufficient proof of the employee's membership in an emergency volunteer organization and
- that the performance of such emergency services will not unreasonably hinder agency activity for which the employee is responsible.

In emergency situations, which are not covered by an emergency volunteer organization, agencies may determine whether the emergency service to be provided can justifiably be designated as a work assignment, based on the expertise of the employee. If so, the agency head may authorize short-term work assignments when requested by an official party. Time

Other Management Approved Leave Policy (OMAL)(cont.)

worked on such assignments by an FLSA non-exempt employee is considered work time for the purpose of computing overtime.

For provisions relating to special assignments for firefighting, see N.C.G.S. § 113-56.1

§ 6.3. American Red Cross Disaster Service Leave

An agency may grant leave with pay not to exceed 15 workdays in any 12-month period to participate in specialized disaster relief services. The decision to grant leave rests in the sole discretion of the agency based on the work needs of that agency.

To qualify for leave, the employee must:

- be a disaster service volunteer of the American Red Cross, and
- be requested by the American Red Cross to participate.

The disaster must:

- be within the United States and
- be designated at Level III or higher in the American National Red Cross Regulations and Procedures.

While on disaster leave, the employee shall:

- be compensated at the regular rate of pay, and shall
- not lose seniority, pay, vacation leave, sick leave, or earned overtime accumulation.

Duties performed while on disaster leave shall not be considered to be a work assignment. The employee is granted leave based on the need for the employee's area of expertise. Job functions although similar or related are performed on behalf of and for the benefit of the American Red Cross. The State shall not be liable for workers' compensation claims arising from accident or injury while the employee is on assignment. Time spent on disaster leave is not considered work time for the purposes of computing overtime.

Note: This policy implements the provisions of N.C.G.S. § 166A-30 - 166A-32.

§ 6.4. Blood, Bone Marrow and Organ Donorship

Employees are encouraged to use the privilege and opportunity to participate in life giving through blood, bone marrow and organ donorship.

Other Management Approved Leave Policy (OMAL)(cont.)

Participating employees may be given reasonable time off with pay for whole blood donation, pheresis procedure and bone marrow transplant. Employees may be given up to 30 days with pay for organ donation.

§ 7. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1009-1011

§ 8. History of This Policy

Date	Version
November 1, 2009	• First version - Consolidated the miscellaneous types of leave that are authorized in other policies but for which there is not a separate category to account for them.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointment types and career status.

Pay Administration Policy

Pay Administration Policy (cont.)

§ 1. The Classification & Compensation System

§ 1.1. Philosophy

It is the philosophy of the State of North Carolina to appropriately and equitably compensate its employees, to encourage excellence in performance, and to maintain the labor market competitiveness necessary to recruit, retain, motivate, and develop a competent and diverse workforce.

To accomplish this, the state utilizes a quartile-based system where the midpoint of the salary range is aligned to the market 50th percentile for established state classifications. Under this Policy,

- Salaries around the midpoint are where the state generally strives to align employees who:
  - Have several years of experience beyond the minimum qualifications set out in the job classification's specification, and
  - Are competently functioning in their positions.
- Salaries around the midpoint are also where the state generally strives to align new hires who:
  - Have documentation that shows several years of experience beyond the minimum qualifications set out in the job classification's specification, and
  - Have documentation that demonstrates their ability to competently function in their positions.

The precise process for setting salary is introduced below in Section 1.4 of this Policy and is discussed in detail in Section 3.3 of this Policy.

Pay Administration Policy (cont.)

Salary determinations should be viewed in the context of the state's Total Rewards package. The Total Rewards package includes not only salary, but also any bonuses or other forms of pay, paid holidays and leave, the opportunity to receive the state pension and other retirement benefits when eligible, other benefits such as the programs available through NC Flex, a flexible work-life balance, recognition, and development.

The classification & compensation program and its compensation plans are based on consistent principles and practices that are equitable, legally defensible, and provide for sound fiscal discipline yet are flexible enough to meet changing business needs. The program fosters a culture of accountability while encouraging employees to actively achieve their career potential with North Carolina state government.[1]

§ 1.2. Purpose

The purpose of this Policy is to implement a standard set of compensation programs and procedures for permanent, probationary, and time-limited state employees, along with standard procedures for job classification and salary administration actions, in accordance with N.C.G.S. §§ 126-4(1) to (3), 126-4(6), and N.C.G.S. § 126-3(b)(4)-(6).

§ 1.3. The Importance of Pay Administration

Pay Administration is one of the most highly scrutinized aspects of Human Resource Management. An employee's salary is public information, unlike other personnel file materials which are confidential under Article 7 of Chapter 126 of the North Carolina General Statutes. There are many laws addressing compensation and equity. Additionally, good pay practices are important for good management, maintaining employee morale, as well as attracting and retaining employees. State salaries are paid through taxpayer funds, and fiscal responsibility is expected.

Salary decisions, for any position, are fact-specific and often complicated due to interrelationships between each position's pay with other positions. When setting salary,

[1] See 25 NCAC 01D .0101 (providing that the salary rate structures shall be adequate to provide "compensation that encourages exceptional performance and maintains labor market competitiveness within the limits of financial resources").

Pay Administration Policy (cont.)

agencies[2] must use the step-by-step process in this Policy, which provides a structure for organized, accurate decision-making. It is particularly important that agencies consider whether pay is equitable for similarly situated employees. Section 3.3(b) of this Policy provides a definition of "similarly situated" and sets out a process for agencies to evaluate pay equity as they make pay administration decisions.

§ 1.4. Salary Structures, Pay Grades, and Salary Ranges

The compensation program shall be administered through salary structures, which are the framework for managing compensation in a fair and consistent manner. The state's salary structures are designed and developed to align with the market rate of pay, based on labor market analysis. Each position is assigned to a pay grade with an associated salary range.[3] The pay grade's salary range is constructed with a minimum, midpoint, and maximum salary rate, and further divided into quartiles (quarters of equal size).[4]

The process described in Section 3 of this Policy, entitled "Determining Salary," is used to determine an employee's salary within the range. There are five steps to the process:

1. Agency staff start with a salary figure from the Baseline Salary Calculator, which measures how much experience and education a candidate or employee has above the position's minimum requirements. (See Section 3.3(a) of this Policy for details.)
2. Then, agency staff must consider pay factors established under this Policy. There are two mandatory factors that must be considered (budget resources and internal pay equity) and three optional factors that may be considered. Based on application of the pay factors, agency staff can adjust the proposed salary from the level produced by the Baseline Salary Calculator. (See Section 3.3(b) of this Policy for details.)

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[2] References to "agencies" in this document also include commissions, boards, and university or community college systems or institutions when they set the pay of employees who are subject to the State Human Resources Act.

[3] 25 NCAC 01D .0102(a).

[4] Quartile 1 includes the minimum to 24.99999% of the salary range. Quartile 2 starts at 25.00% of the salary range and runs up to (and including) the midpoint. Quartile 3 starts immediately above the midpoint and runs up to 74.99999% of the salary range. Quartile 4 starts at 75.00% of the salary range and runs up to the maximum.

Pay Administration Policy (cont.)

3. The next step requires review of the quartile description, stated in this Policy, for the quartile where the agency's proposed salary would be found. Agency staff must confirm and document that the qualifications and capabilities listed in the relevant quartile description match the hiring process documentation (such as the application) for the candidate. (See Section 3.3(c) of this Policy for details.)
4. The agency must review its flexibility authorization chart to determine whether the proposed action needs to go to OSHR for review and approval. (See Section 3.3(d) of this Policy for details.)
5. Finally, agency staff must review the materials they have created to document the decision-making process. This Policy calls for agencies to use a form, entitled "**Form SAL**," as the foundation for this documentation. This form must be placed in the OSHR-designated HR system of record, and it will be the core document sent to OSHR when an action requires OSHR approval. (See Section 3.3(e) of this Policy for details.)

§ 1.5. Quartile Descriptions

The following quartile descriptions illustrate the assessed qualifications and expected capabilities of an employee in that quarter of the salary range. The quartile descriptions are listed below.

Quartile 1	The individual has no or limited prior related education and experience above the minimum required for the job classification, possesses entry level qualifications, and/or uses on-the-job education and experience to develop knowledge and skills.
Quartile 2	The individual demonstrates a solid base of knowledge and skills gained by related education and/or prior experience. The individual proactively engages in acquiring additional education/development to proficiently, consistently, and independently perform key duties.

Pay Administration Policy (cont.)

Midpoint	The individual has experience competently performing all expected duties of the position independently and consistently. The individual continues to participate in additional education/development to become even more skilled or proficient. Typically, the individual has gained this level of independence based upon several years of experience beyond the minimum qualifications set out in the job classification specification. ***NOTE**: The midpoint is the target for the typical employee who is experienced and can competently function in the position.*
Quartile 3	Individual consistently and independently achieves proficiency above the level of required duties and responsibilities of the position at the midpoint. It is expected that the individual will add essential value to the position by, for example, providing "hard to recruit" knowledge/skills or delivering specialized skills.
Quartile 4	Individual is a proven subject matter expert in their position with an in-depth knowledge and ability to fulfill all the duties and responsibilities of the position. The individual exhibits a consistently high level of proficiency and related value-added skills. The individual's file has documentation of highly specialized, related expertise and experience.

The minimums, midpoints, maximums, and quartiles in the pay grades are designed to be competitive with rates in the external labor market,[5] taking into consideration both public-sector and private-sector markets. To the extent possible while still reflecting competitive factors in the labor market, the salary structures will reflect the hierarchy within state government employment. They also will be consistent with the state's ability to pay and will support equity.[6]

[5] 25 NCAC 01D .0102(a).
[6] 25 NCAC 01D .0102(a).

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§ 1.6. Salary Structure Adjustments

The salary structures will be revised, in response to labor market trends, on a recurring cycle and where needed.[7] The Office of State Human Resources ("OSHR") will conduct labor market studies at regular intervals and make needed adjustments to ensure the salary structures maintain an appropriate level of competitiveness to recruit and retain a skilled workforce. Those adjustments may result in adoption of new salary structures and/or salary range revisions at the discretion of OSHR, as approved by the State Human Resources Commission (the "Commission"). Salary structures are sometimes revised by legislative action.

§ 1.7. Availability of Funds; Authority

The approval of all personnel actions, including salary increases of any kind, is subject to the availability of funds. No action can be implemented that would exceed the funds available. Any written salary commitment shall include a statement of notification that the salary is subject to the availability of funds. Communications about salary are subject to retraction if there is an administrative error or the salary has not been approved by the proper authority.

§ 2. Scope of This Policy

The compensation program and its component plans shall be administered through this statewide Pay Administration Policy. This Policy covers all pay plans, except for the situations noted below in this section.

§ 2.1. Types of Employees That Are Covered, or Not Covered, by This Policy

This Policy applies to full-time and part-time permanent, probationary, and time-limited employees.[8] This Policy applies not only to career State employees, but also generally to employees with exempt policymaking, exempt managerial, confidential

[7] 25 NCAC 01D .0101.

[8] More specifically, this Policy applies to employees unless they are exempt from the policies, rules, and plans established by the State Human Resources Commission under N.C.G.S. § 126-4(1), the statute on "position classification plans"; § 126-4(2), the statute on "compensation plans"; § 126-4(3), the statute on "reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed"; and § 126-4(6), the statute on "appointment, promotion, transfer, demotion and suspension of employees."

Pay Administration Policy (cont.)

assistant, confidential secretary, chief deputy, and chief administrative assistant status, as well as probationary State employees.[9] This Policy does not apply to temporary employees.

The statute makes some employees statutorily exempt from the policies, rules, and plans established by the Commission under N.C.G.S. § 126-4(1) to 126-4(3) and 126-4(6).[10] For these statutorily exempt employees, there may be situations where it is appropriate to have a different classification and compensation philosophy. Agencies are encouraged to consult with OSHR for these positions to help build a common classification and compensation system for the state as one employer.

Some agency heads have special statutory authority to set salary.[11] Nothing in this Policy supersedes these statutory authorizations.

§ 2.2. Situations Where This Policy Does Not Apply

Refer to the separate Career Banding Salary Administration Policy for policy guidance on pay administration for employees who remain in the career banding structure/system.

The application of legislative pay increases and any Salary Adjustment Fund will be specific to the guidelines as issued by OSHR, the Office of State Budget and Management, and the North Carolina General Assembly, outside of this Policy and based on legislation.

Positions with legislative instructions, such as statutory step plans, should be administered under the specific provisions of the statute. Agency staff may administer these statutory step plans, and shall consult with OSHR to ensure consistent application of the same statutory language between different agencies. If agencies have questions about the

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[9] The statutes on these types of exempt employees — N.C.G.S. § 126-5(c)(1)-(4) and 126-5(c7) — specify that although they are exempt from many provisions of the State Human Resources Act, these types of exempt employees are subject to the policies, rules, and plans established by the Commission under the statutes listed in footnote 8. This Policy is established by the Commission under the statutes listed in footnote 8. Therefore, this Policy generally applies to exempt policymaking, exempt managerial, confidential assistant, confidential secretary, chief deputy, and chief administrative assistant employees.

The text indicates that these employees are "generally" covered by this Policy because some statutes create specific exemptions from this Policy for particular kinds of exempt employees at particular agencies. See footnote 11 below for an example.

[10] See, for example, N.C.G.S. § 126-5(c1), (c8), and (c11).

[11] For example, Council of State agencies have the authority to set the salary of their exempt policymaking and exempt managerial positions within a modified version of the salary ranges established under this Policy. They may exceed the maximum rate plus ten percent. N.C.G.S. § 126-5(c14). The State Chief Information Officer may set salaries for Department of Information Technology employees within the salary ranges established under this Policy. N.C.G.S. § 126-5(c15)(2).

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interpretation of these statutes, OSHR may issue interpretive guidelines after consultation with legislative staff and agency staff.

§ 3. Determining Salary

The process described in this section of the Policy must be used by Human Resources staff and hiring managers when setting the salary of new employees and when providing salary adjustments to existing employees.

§ 3.1. Minimum and Maximum of the Salary Range and Recruitment Range

§ 3.1(a) Below Minimum of the Range

Subject to the exceptions listed in the last sentence of this paragraph, agencies shall not set salaries below the minimum of the salary range for the job classification.[12] Subject to those exceptions, agencies also shall not set salaries below the minimum of the recruitment range published in the vacancy announcement. These provisions do not apply (i) when the agency already has similarly situated employees in the same job classification below the minimum due to funding issues, (ii) when otherwise necessary to maintain equity with similarly situated existing employees who are also below the minimum, and (iii) to OSHR-approved trainee progressions.

When non-trainee employees fall below the minimum of the salary grade for any reason (such as salary structure adjustments, salary range revisions, or hiring below the minimum under exception (ii) above):

- Any salary increase is subject to the availability of funds. The employee's salary will not increase if funding is not available.
- Agencies should give a priority for funding to employee salaries that are below the minimum of the range. In determining relative priority, agencies must also take into consideration internal equity.
- The agency must provide OSHR, at implementation and on March 1 of each year, with its plan (contingent on funding) to increase salaries to the minimum.

[12] 25 NCAC 01D .0102(a).

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- Agencies should contact OSHR to discuss any exception or variance that has been issued -- or that may be necessary -- to deal with the particular circumstances of the situation.

§ 3.1(b) Above Maximum

Agencies shall not set salaries above the maximum of the salary range for the job classification.[13] The salary also shall not be set above the maximum of the recruitment range published in the vacancy announcement. These provisions do not apply to employees whose salaries are increased because they are temporarily acting in another position.

Existing employees' salaries may also become above the maximum due to salary structure adjustments or salary range revisions. If this occurs, existing employees' salaries will not decrease to the maximum of the salary range. Legislative increases also continue to apply, unless stated otherwise in the particular budget act that provided the increase. However, employees who are above the maximum cannot receive a discretionary salary increase without OSHR approval.[14]

§ 3.2. Criteria That Must Be Met Within the Agency to Begin the Process

§ 3.2(a) Request from Management to Agency HR Staff

To begin the salary setting process, agency management should make a request to agency HR staff, following the agency standard operating procedures and agency forms. Each agency should develop necessary procedures and forms needed to document actions. These procedures and forms should include, but not be limited to, how to document agency action justification and how to address budgetary limitations.

[13] 25 NCAC 01D .0102(a). As stated in § 2 of this Policy above, this restriction does not apply to positions that are exempt from the classification & compensation provisions of the State Human Resources Act, and Council of State members have statutory authority to set salaries above the maximum.

[14] This includes in-range adjustments, temporary pay increases, and any other kind of discretionary increase actions. It does not include Legislative Increases and Longevity.

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§ 3.2(b) Limits on In-Range Adjustments if Active Performance/Discipline

If an employee, in the same position, has an active disciplinary action or overall performance that was most recently documented as not meeting expectations, that employee is not eligible for in-range increases. This ineligibility is temporary and lasts only until the disciplinary action becomes inactive and performance once again reaches a "meet" or "exceed expectations" level. Any temporary ineligibility under this section does not travel with the employee if he or she transfers to a different position.[15]

§ 3.3. Step-by-Step Process for Setting Pay

Agency staff must follow the steps below to set salaries and determine pay increase amounts.

§ 3.3(a) Step One: Baseline Salary Calculator

Agency staff should begin making pay decisions by using the Baseline Salary Calculator, which is a traditional formula based on a person's experience and education above the minimum requirements for the job classification. (The Baseline Salary Calculator is a worksheet embedded in **Form SAL**.) In the documentation for the salary action, the agency must document the Baseline Salary Calculator's result (the "**preliminary baseline salary**").

The Baseline Salary Calculator provides that salaries shall first be set at the minimum of the salary range if the employee's experience, training, and education meet the requirements of the job classification specification. Then, agency staff add 5% of the salary range's minimum for each qualifying year of directly related experience, training, and education above the minimum recruitment standards set out in the job classification specification. This calculator should be used in calculating preliminary baseline salaries for new hires and for existing employees' promotions, in-range increases, reclassifications, reinstatements, and lateral transfers.[16]

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[15] Discretionary pay increases are those funded with agency dollars and do not include a legislative increase, legislative actions such as the adoption of a step plan, and do not increase salary range revision or salary structure increases provided that other similarly situated employees receive the increase. If an agency has written appraisals for probationary employees, this may also be the basis for withholding discretionary increases provided to similarly situated probationary employees.

[16] For demotions or reassignments, see the Demotion or Reassignment Policy.

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The Baseline Salary Calculator provides the first step for determining a salary within the range. The preliminary baseline salary from the Baseline Salary Calculator is not the "qualifying salary" for an employee. Instead, the preliminary baseline salary is a starting point. Agency staff may determine employees or new hires should receive a higher or lower salary based on the application of the pay factors beyond education and experience. The next steps in the process involve consideration of factors (like budget limitations and equity) that may adjust salaries above or below the Baseline Salary Calculator level.

§ 3.3(b) Step Two: Pay Factors

After the Baseline Salary Calculator, the agency must consider pay factors that are established by OSHR under this Policy. Pay factors are used to evaluate whether the figure from the Baseline Salary Calculator is appropriate. The proposed salary may be adjusted based on documented consideration of the pay factors.

Documentation

In the documentation for the salary action, the agency must document how pay factors were considered. The pay factors are documented as part of **Form SAL**. Agencies should establish mechanisms to track and audit how pay factors are applied across a work unit, division, or agency.

The Five Pay Factors

The pay factors adopted under the Policy are listed below. Agencies can only consider the pay factors listed below unless OSHR gives approval to utilize other pay factors that may be warranted for a specific position or situation. Pay factors must be consistently applied for similarly situated employees.

The first two pay factors must be considered in all situations.

FOR ALL ACTIONS ASSESS:

Pay Factor # 1, <u>Budget Resources</u>

This pay factor measures the proposed salary against the funding available. The availability of funds may limit an agency's ability to pay above a certain salary. Budget

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resources are allocated for salaries according to the organization's business need and funding availability. Salaries are limited by the funding in the agency's budget.

FOR ALL ACTIONS ASSESS:

Pay Factor # 2, Internal Pay Equity

This pay factor is a fairness criterion that takes into consideration the proximity of one employee's salary to the salaries of others who have comparable levels of education, certifications, and experience; duties and responsibilities; productivity; and knowledge, skills, and abilities. This factor also considers salary compression, criticality of the position to the mission of the unit, and other organizational factors.

Pay equity is of utmost importance and is the responsibility of each agency. It is the agency's responsibility to respond to any potential equity issues and to avoid exacerbating any existing salary inequity.[17] Each agency is responsible for maintaining pay equity within the agency. If a potential equity issue is created, the agency's proposed salary action must also contain a written plan approved by the Agency HR Director that addresses how the agency will adjust similarly situated employees' salaries impacted by the employee's salary decision when funding becomes available to address equity.[18] The agency must then implement the action plan as documented. Agencies must also document plans if a proposed salary action for an employee will result in the employee being paid less than similarly situated employees. These action plans may be reviewed by OSHR.

Generally, the salary for an employee should be equitable relative to other similarly situated employees. "Similarly situated employees" means employees in the same job classification or in closely related job classifications at the same agency who have comparable levels of education and experience; duties and responsibilities; productivity; and knowledge, skills, and abilities.[19]

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[17] An Administrative Code rule on horizontal transfers currently defines "internal salary inequity" as existing "when an employee's salary is 10 percent above or below" similarly situated employees. 25 NCAC 01D .0913(a). However, under federal and state law, there is no safe harbor for differences smaller than 10 percent. Indeed, there have been cases in the past where employers' pay differences were held discriminatory in particular circumstances, even though those differences were smaller than 10 percent.

[18] See Section 3.3(e) of this Policy for more details on documentation.

[19] Trainees and employees exempt from requirements of this Policy are not "similarly situated" for purposes of this definition.

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Generally, agencies should also seek to avoid pay compression. "Pay compression" occurs when the pay of one or more employees are very close to the pay of more trained and experienced -- but otherwise similarly situated -- employees performing the same duties and responsibilities in the same job at the same agency. Pay compression also occurs when the pay of one or more employees are very close to the pay of those in higher level jobs, such as managerial positions. In some cases, funding differences or other neutral factors may make pay compression unavoidable.

If the first two factors, together with the Baseline Salary Calculator, support the agency's recommended salary, the next three factors need not be reviewed. However, it can be helpful to analyze pay factors 3, 4, and 5 in many situations. Agencies are always free to analyze the following factors in any situation.

ASSESS AS NEEDED:

Pay Factor # 3, <u>Distinguishing Specific Experience and Skills</u>

This pay factor accounts for distinguishing differences in directly related knowledge, skills, abilities, duties, and responsibilities acquired through specific experience. This factor should be considered if the quality of the applicant or employee's experience might have more weight than the number of years of experience listed in the Baseline Salary Calculator.

ASSESS AS NEEDED:

Pay Factor # 4, <u>Specialized Education, Licensures, and Certifications</u>

This pay factor accounts for any education, licensures, or certifications that are relevant to the duties listed in the job description, add value to the position, and are in addition to the required minimum education and experience. These skills, licensures, or certifications must be either identified in the job posting's minimum or preferred qualifications or documented in the hiring process.

ASSESS AS NEEDED:

Pay Factor # 5, <u>Recruitment/Retention Issues Specific to Market</u>

This pay factor analyzes external issues related to the position which may warrant higher salaries being paid either to new hires or to existing staff. It includes the current

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dynamic market for the specific position and industry. Situations like special assignments and geographic factors are also addressed under this pay factor. Geographic differentials affecting the entire salary range should be considered under § 6.3 of this Policy below. Special assignment pay or acting pay should be considered under §§ 6.4 and 6.5 of this Policy below.

§ 3.3(c) Step Three: Measure Against the Quartile Descriptions

After any adjustments from application of the pay factors, the next step is to review the description for the quartile that contains the agency's proposed salary. (The quartile descriptions are listed above in § 1.5 of this Policy.) At this stage, agency staff should confirm that the qualifications and capabilities listed in the relevant quartile description match the hiring process documentation for the candidate. (For new hires, this documentation would include the application. For existing employees receiving a salary increase, this documentation would include all the material the agency has generated to establish why the employee's salary should be increased.)

This review is mandatory for any proposed salary in Quartiles 3 or 4. It is optional for any proposed salary in Quartile 1, in Quartile 2, or at the midpoint. Where mandatory, Agency staff must document how the quartile descriptions were applied.

When OSHR reviews agencies' actions, OSHR will use the quartile descriptions as a standard to measure how the agency documentation of the candidate's qualifications compares to the proposed salary.

§ 3.3(d) Step Four: Flexibility Authorization and (If Applicable) OSHR Approval

Introduction to Flexibility Authorizations

Statutes initially provide authority for job classification and salary administration to OSHR. N.C.G.S. § 126-3(b)(4)-(5). By statute, OSHR is responsible for entering into delegation or decentralization agreements ("flexibility authorizations") for agencies to instead perform these actions. N.C.G.S. § 126-3(b)(4). Pursuant to these statutes, OSHR offers flexibility authorization agreements to agencies. Under these flexibility authorizations, OSHR has transferred salary-setting authority to agencies in most circumstances. The great majority of salary actions are now done at the agency level, rather than at OSHR.

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Most agencies will work under a standard flexibility authorization. In particular circumstances, agencies may have flexibility authorization agreements that modify the standard flexibility authorization.

Procedure for This Step

In Step Four of the salary administration process, the agency must ensure that the action is within the authority delegated to the agency under OSHR's flexibility authorizations. If outside the delegated authority, the agency must under state law have OSHR approval to complete the proposed salary action. N.C.G.S. § 126-3(b)(6). The precise situations where the agency must receive OSHR approval are listed in the agency's flexibility authorization agreement.

Documentation

OSHR will make available a form (**Form SAL**, Step 4) that each agency can use as a guide to its flexibility authorization. Agencies should establish mechanisms to track and audit their use of flexibility authorizations.

§ 3.3(e) Step Five: Support the Action with Documentation and Enter the Documentation in the System of Record

Agencies must generate a position-related justification that supports the salary. Complete, accurate and compelling documentation is a best practice and is required to demonstrate compliance, legal defensibility, and fiscal responsibility. Therefore, agencies must prepare and keep thorough supporting materials for each salary decision, including specific details of the process used to determine salary. These supporting materials must be placed in the system of record designated by OSHR.

To document the decision-making process, agencies are required to use a worksheet (**Form SAL**) that has been developed by OSHR. Form SAL must be included in the documentation for each salary action in the OSHR-determined system of record. (For example, in the HR/Payroll system as of 2022, the Form SAL Word document should be attached to the PCR for each action.) For actions that require OSHR approval, Form SAL replaces the justification memo that was required under previous OSHR policies and guidelines.

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Agencies may also supplement Form SAL with agency-specific worksheets. When the agency uses other exercises or documents (such as inbox exercises, reference checks that discuss higher qualifications, or tests) to support the salary recommendation, these materials must be retained by the agency, and a short summary or the results of those exercises or documents should be referenced in Form SAL.

In addition to maintaining documentation in agency files, action notes must be placed on actions in the HR/Payroll system. Earned experience and education (total relevant experience) also must be documented in the HR/Payroll system.

It is especially important to document the agency's consideration of internal pay equity, which is one of the pay factors. If a salary would not be equitable to other similarly situated employees, the action must be approved by the Agency HR Director. The agency must ensure that all outliers are documented clearly. The agency must document the actions it will take to resolve the discrepancy. If any comparisons have been eliminated from review, the agency should include in the documentation the rationale behind the decision to eliminate that comparison.

State law instructs OSHR to rescind flexibility authorizations in the case of noncompliance with established Commission policies and rules. N.C.G.S. § 126-3(b)(5),(8). Statutes also instruct that OSHR should determine compliance through "routine monitoring and [a] periodic review process." N.C.G.S. § 126-3(b)(8). Therefore, OSHR will conduct recurring audits of agencies' salary administration documentation, provided in the system of record, and OSHR may also request additional documentation in specific cases.

§ 3.4. Exception Requests

In addition to the situations where OSHR's approval is required because an action would be beyond the scope of a flexibility authorization, the Commission has granted OSHR authority to grant exceptions and variances from this Policy and from the rules of the Commission. 25 NCAC 01A .0104.

Only with the prior approval of the State Human Resources Director and in specific cases which involve circumstances such as severe labor market conditions or extraordinary qualifications will salaries be considered which exceed the limits of this policy.

These exceptions and variances require written findings of fact in which the State Human Resources Director (or designee) concludes that the granting of the exception or

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variance is necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration. The findings of fact set forth fully the circumstances and need for the exceptions and/or variances granted. 25 NCAC 01A .0104(b). Exceptions are reported by OSHR to the Commission at its next meeting. 25 NCAC 01A .0104(c).[20]

As a result, requests for pay or salary exceptions or variances to policy or rule are only allowed with prior approval of OSHR, and these written requests require submission through established procedures.

§ 3.5. OSHR Process for Approvals, Exceptions, and Variances

OSHR will provide agencies with a process and methodology for submitting documentation to OSHR. There are two situations in which documentation would be sent to OSHR:

- **Approval**, when OSHR is asked to review and pre-approve an action that is outside the scope of an agency's flexibility authorization, before the action takes place. Approvals are issued under N.C.G.S. § 126-3(b)(6).
- **Exceptions or variances**, when OSHR is asked to review and authorize a proposed category of actions where Commission policies and rules would not apply at all, or would apply only in part. "Exception" and "variance" have the same meaning. Exceptions and variances are authorized by 25 NCAC 01A .0104.

For approvals of actions beyond an agency's flexibility authorization under N.C.G.S. § 126-3(b)(6), OSHR will consider the following criteria in its review:

- Whether the documentation demonstrates that the employee/applicant matches the qualifications and capabilities listed in the quartile description.
- Appropriate application across state agencies.
- Whether the policy steps were followed.
- Whether the job-related justification and documentation reasonably demonstrate the reasons for this salary decision.
- Whether expanded recruitment efforts were undertaken, beyond posting the position (such as posting in additional forums beyond the OSHR website; re-opening the

[20] If an exception is granted within five days of a Commission meeting, it may be reported at the following meeting. 25 NCAC 01A .0104(c).

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posting for additional time; partnering with internal or external groups to publicize the posting; and reevaluating any mandatory qualifications, beyond the ones stated in the job classification, to avoid unnecessary exclusion of candidates who could perform the job).

- Whether there are any additional tools available to address the issue.

For exception or variance requests to policies or rules under 25 NCAC 01A .0104, OSHR will consider:

- The circumstances and need for the exception or variance
- Whether granting the exception or variance is necessary to promote efficiency of administration
- Whether granting the exception or variance is necessary to provide for a fair and reasonable system of personnel administration.[21]

OSHR may grant approvals, exceptions, and variances only in writing. For purposes of this Policy, "in writing" includes not only paper, but also written emails and approvals in automated systems like SmartSheet. Spoken remarks by OSHR staff are not approvals, exceptions, or variances under this Policy.

§ 4. Particular Situations

§ 4.1. Part-Time Salary Rates

Employees with a part-time permanent appointment shall be paid the equivalent of a full-time salary rate prorated for the number of hours worked per week.

§ 4.2. Employee Movement Between Positions

Employees transferring from a career-banded job classification to a graded job classification should be treated as a Band to Grade Transfer action and the salary established using this Policy. When employees are demoted or reassigned to a lower class, refer to the Demotion or Reassignment Policy.

[21] The criteria for exception or variance requests are established in 25 NCAC 01A .0104(b).

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§ 4.3. Trainees

Some job classifications often require knowledge or skills that are not available in the existing labor pool or cannot be learned in a short period. To accommodate this, an agency may establish a trainee progression where appropriate to provide a uniform guide for equitable employment and compensation of trainees in a specific job. The offer letter shall outline the salaries for which the trainee may be eligible based on satisfactory completion of the progression.

- The trainee progression must define the recruitment standards, basic skills and related knowledge needed.
- The trainee progression must specify a duration which approximates the normal time for training needed for applicants with potential to meet the full requirements of the position. The employee must meet the minimum education and experience requirements for the position within 24 months after the beginning of the trainee progression.
- The trainee progression must provide competitive salary progression rates that are spread over the training period.

See the Appointment Types and Career Status Policy for more information on trainees.

The salary progression for a trainee shall fall between:

- No lower than 10% below the minimum of the position's salary range, and
- No higher than the top of the first quartile for the position's salary range.

The salary must not exceed that of any existing non-trainee employee, unless the employee possesses sufficient additional education or experience to qualify for a higher rate. Trainee salary increases will be governed by § 5.3 below.

An employee may also be assigned to a job classification to work against a regular classified position.

§ 5. Salary Increases

§ 5.1. Determining Effective Date; Limit on Retroactive Salary Adjustments

In-range salary adjustments shall be made effective on a current basis. Agencies shall make every effort to ensure employees receive salary adjustments in a timely manner. A retroactive discretionary salary adjustment requires OSHR approval if its effective date is

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older than 90 days. This approval requirement for older retroactive salary adjustments does not apply to:

- Any salary adjustment that the agency is required to provide, rather than having the discretion whether or not to provide;
- Settlements or court orders;
- Adjustments from the Labor Market Adjustment Reserve, and
- Retroactive implementation of a legislative increase in a budget act to the beginning of the current fiscal year (for example, retroactive application to July 1, 2024 of a legislative increase in an appropriations act that passed the legislature and became law in October 2024).

OSHR can approve retroactive discretionary salary adjustments beyond this date for good cause. OSHR will publish an electronic form for agency HR staff to request retroactive salary adjustments that are older than 90 days. The Director of OSHR shall designate the OSHR employees with authority to approve retroactive requests.

§ 5.2. Salary Increases for Non-Probationary Employees

There are several actions (such as in-range adjustments, reclassifications, promotions, acting pay, and special salary adjustments for retention) to increase salaries for existing employees. Under these actions, employees' salaries may be increased for any of the following reasons:

- **Equity**, when employees in the same position/branch/role/competency are performing very similar work with a similar level of competence to those who have a higher pay rate, and the pay discrepancy has no documented justification, or to alleviate pay compression. See Pay Factor # 2 for further details.
- **Labor Market**, when an employee's salary is less than the pay for comparable positions in the labor market. See Pay Factor # 5 for further details.
- **Job change**, when an employee has assumed higher-level duties or there have been changes in the variety and scope of duties.
- **Employee retention**, when the following are all true:
    - The employee has a documented offer for a comparable position (i.e., not an obvious promotion) outside of the agency. (See note below.)
    - The employee has given that documentation to the manager.

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- The employee has a "meets" or higher on their most recent annual performance appraisal and no active written discipline.
- The employee has skills or knowledge that would be difficult to replace.

Note: The documentation showing the offer does not need to be an offer letter. (An offer letter is often issued at the very end of the hiring process, after the agency has already lost the employee.) To show the offer, agencies may accept a copy of the posting and an attestation from the employee. Generally, any documentation showing the offer for the position is sufficient to show an employee retention need.

For any increase under any type of employment action, the agency must complete Steps 1 to 4 in the salary determination process, as set out in § 3.3 of this Policy. The agency also must complete the documentation described in § 3.3 of this Policy.

§ 5.3. Salary Increases for Probationary Employees

Under this Policy, agencies may provide salary increases to probationary employees by utilizing any of the salary actions listed in § 5.2 above. If agencies choose to provide salary increases to probationary employees, they must follow all the process steps listed in § 5.1 and § 5.2 above. In addition, the agency should take special care to consider whether the action is necessary before the end of the probationary period. The agency should also consider whether the increase should be in the place of any increase that might occur at the end of the probationary period under § 5.5 of this Policy below.

§ 5.4. Salary Increases for Trainees

While in a trainee classification, the following shall occur:

- An evaluation of the employee's performance and progress on the job shall be made at frequent intervals. See the Performance Management Policy located in Section 10 of the State Human Resources Manual for additional information related to the frequency of performance reviews.
- Trainee salary adjustments may be provided at specific intervals; however, increases are not automatic.
- Trainee salary adjustments shall not be awarded if an employee has an unsatisfactory performance rating. See the Performance Management Policy located

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in Section 10 of the State Human Resources Manual for additional information on how to address poor performance. Eligibility for trainee salary adjustments shall resume once the employee's performance becomes acceptable or obtains a Meets Expectations or Exceeds Expectations rating.

- Once the trainee meets the minimum knowledge, skill, and ability requirements or competently completes the trainee period with a satisfactory performance rating, the salary shall be increased to the minimum of the range for the regular job classification.

The above applies to officially recognized trainee progressions. OSHR also works with agencies to establish salary progressions when there is not an established trainee classification.

§ 5.5. Salary Increases at End of Probationary Period

When an employee is given a permanent appointment after successful completion of the probationary period, the employee's salary may be increased by up to 5% or to a higher rate if conditions justify, consistent with the provisions of this Policy for in-range adjustments. For this increase, the agency must complete Steps 1 to 4 in the salary determination process set out in § 3.3 of this Policy, and the agency must complete the documentation described in § 3.3 of this Policy.

§ 6. Salary Range Revisions, Special Rates, and Non-Standard Applications

§ 6.1. Salary Range Revisions

§ 6.1(a) Definition

A salary range revision is any change in a salary range approved by the Commission and resulting from changes in the labor market. The revision may result in a change to the minimum and maximum, a change to the minimum only, or a change to the maximum only, along with a resulting change to the midpoint.

§ 6.1(b) Salary Rates Above Standard Rates

In addition, based on labor market demands, salary rates for some job classifications may be approved by the Commission above the standard rates.

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§ 6.1(c) Result of a Salary Range Revision

This section applies either to wholesale salary structure adjustments under § 1.4 of this Policy or a specific salary range being revised under this § 6.1 of this Policy.

When a job classification is assigned to a higher grade or when the salary range changes due to changes in the labor market, if there are no performance or personal conduct issues involved for the employee:

- The employee's salary shall be increased to the minimum of the new range as soon as possible and within funding limitations.
- In this situation, the existing employee's salary must be increased to the range minimum before the agency brings on any new employees in the same job classification who are similarly situated (including but not limited to having the same experience) and who would be paid more by being paid at the range minimum.
- Further salary increases beyond the minimum of the range may be given in accordance with the provisions set out above in this Policy. The agency must complete Steps 1 to 4 in the salary determination process, as set out in § 3.3 of this Policy. The agency also must complete the documentation described in § 3.3 of this Policy.

If funds are not available to implement a salary range revision, the increase to the minimum shall be given from the first available funds and may be made retroactive to the effective date of the salary range revision. If the increase is denied because of performance or personal conduct, the increase may be given on a current basis if/when the issue is resolved.

§ 6.1(d) Special Salary Range Situations

Salary Range Revision Within 24 Months of a Reduction

If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation, or salary range revision, but without a corresponding reduction in salary, and the employee's position is later assigned to a higher grade as a result of salary range revision, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in the above salary setting procedure. If the reduction in grade occurred as much as twenty-four months previously, the agency

Pay Administration Policy (cont.)

may give consideration to granting a salary increase within the provisions of this policy. The need to maintain equity of salaries within the work unit must be a major consideration.[22]

Salary Range Revision to a Lower Grade

When a job classification is assigned to a lower grade, the employee's grade may be allowed to remain at the current level so long as the employee continues to occupy the same position or is in the same job classification; however, the grade of the position must be reduced, and the employee will function in a "work against" mode. Once the position is vacated, it must be filled at the lower grade level.

§ 6.2. Non-Standard Pay Practices

In special situations, OSHR may establish a non-standard application of a market-driven salary range for specific job classifications or pay grades.[23]

For job classifications, non-standard application may be appropriate when unique labor market conditions are impacting recruitment and retention of a job classification within an agency. For example, there may be a situation where less than 75% of the range is needed because of external labor market conditions, or there may be a hyper-competitive market where the top quartiles of the range are needed for competitive pay. Additionally, non-standard applications may exist for a job classification that has a step plan or falls within another pay system driven by state statute. Job classifications that are approved by OSHR for such a non-standard application may utilize a portion of the range for recruiting purposes.

If an agency has a documented job-related justification, the agency may request from OSHR the approval of a non-standard application for a job classification, which will

[22] If the employee is to receive a performance salary increase (interpreted to mean cost-of-living adjustment, career growth recognition award or performance bonus) on the same day as this type of salary range revision, the increase shall be given before a range revision increase is considered.

[23] 25 NCAC 01D .0102(b)-(c).

Non-standard applications may include the special minimum rate concept found in prior policies. A special minimum rate is a substitute minimum rate above the minimum of the salary range when critical recruitment or retention problems are recognized.

Non-standard applications may also exist where state statute dictates an adjustment to an established pay range. An example would be those pay grades that start higher than the market-defined rate due to Session Law 2018-5, Senate Bill 99, which approved all employees to be paid at least a $15 living wage.

Pay Administration Policy (cont.)

provide additional salary flexibility. Designations will be made on a case-by-case basis. The application must include documentation that supports the request. Approval for a non-standard application of a job classification lasts for two years, at which point the agency can approach OSHR again to seek re-approval.

§ 6.3. Geographic Differentials

Under the conditions described in this section of this Policy, agencies may offer a geographic differential to employees. Geographic differentials are not authorized for positions with duty stations inside North Carolina. Geographic differentials may be offered only for positions where the work necessitates that the employee's duty station be located outside North Carolina.

A geographic differential works as a supplemental wage type on top of base pay; it is not part of base pay. The geographic differential is set by OSHR based on the cost of living in particular geographic areas. OSHR will review the cost of living each year to determine the appropriate amount, if any, of geographic differential for a particular geographic area. Geographic differentials may fluctuate from year to year.

§ 6.4. Special Assignment Pay

Under the conditions described in this section of this Policy, agencies may offer special assignment pay to employees. The Office of State Human Resources and the agency shall determine together and agree on the classifications eligible for special assignment pay. Special assignment pay may be offered in situations where particular employees at an agency, rather than all employees in a classification, have been assigned to a role that has special pressures or dangers that create recruitment and retention issues. Special assignment pay is available only when the employee is in this special role, and it should be automatically removed when an employee leaves that role.

For example, special assignment pay could be authorized for health care workers who care for individuals with a history of assaulting caregivers, placing those workers at special risk of physical injury. Special assignment pay could also be authorized for criminal investigators who have been assigned to roles that deal with especially repellent subject matter, leading to greater burnout if they stay in the role for an extended time.

Pay Administration Policy (cont.)

Special assignment pay works as a supplemental wage type on top of base pay; it is not part of base pay. Special assignment pay must be no more than 10% of base pay.

§ 6.5. Acting Pay

Under the conditions described in this section of this Policy, agencies may offer acting pay to employees. Acting pay may be offered when an employee has a temporary assignment in which he or she remains in the same position, but assumes higher-level duties or when an employee has a temporary assignment with a change in the variety and scope of duties. The duration of an acting pay supplement shall not exceed 12 months without OSHR approval.

Acting pay works as a supplemental wage type on top of base pay; it is not part of base pay. For an employee who receives acting pay based on assumption of higher-level duties, the employee's salary, including acting pay, may not exceed the maximum of the salary range for the higher-level position. For an employee who receives acting pay based on change in variety and scope of job duties without performing duties in a higher-graded position, the employee's salary, including acting pay, may not exceed the maximum of the salary range for the employee's current position.

§ 7. Definitions

For purposes of this policy, the terms below mean the following:

Agency: Defined in footnote 2 of this Policy in Section 1.3 above.

Approval: Defined in Section 3.5 of this Policy above.

Commission: The North Carolina Human Resources Commission.

Exception: - Defined in Section 3.5 of this Policy above.

Minimum: The lowest point in a salary range.

Midpoint: The point in each salary grade that is halfway between the minimum and the maximum.

Maximum: The highest point in a salary range.

OSHR: The North Carolina Office of State Human Resources.

Pay Administration Policy (cont.)

Pay Compression: Defined in Section 3.3(b) of this Policy above.

Pay Factors: The factors established by OSHR to evaluate a proposed salary. These factors are identified and discussed in Section 3.3(b) of this Policy above.

Probationary Increase: An increase from the initial salary at the time the employee successfully completes the probationary period.

Recruitment standard: The minimum qualifications required by the state for an appointment to a given job classification. These include the required knowledge, skills, and abilities, minimum education and experience, and any other special requirements such as certificates and licenses.

Salary Range Revision: Any change in a salary range approved by the Commission and resulting from changes in the labor market.

Similarly Situated Employee: Defined in Section 3.3(b) of this Policy above.

Salary Structure Adjustment: A change to a salary range or job classification.

Variance: Defined in Section 3.5 of this Policy above.

§ 8. Responsibilities

OSHR is responsible for:

- Under the leadership of the Governor, establishing the state's compensation philosophy.
- The development and consistent administration of the compensation program, including pay administration.
- Reviewing information entered into the OSHR-designated state system of record, monitoring that information, and periodically reporting to agencies and other stakeholders de-identified summaries of that information, in order to ensure consistency across agencies and provide statewide metrics.
- Establishing supporting policies and ensuring state agency adherence to policy standards through oversight and technical assistance.
- Training agency subject-matter experts on pay administration.
- Consulting with agency staff on pay administration.
- Maintaining the e-mail and contact lists for HR leadership and subject matter experts.
- Responding to requests for salary action reviews when requested by agencies.

Pay Administration Policy (cont.)

- Providing review and approval or denial of actions that are outside the scope of the agency's flexibility authorization.
- Developing flexibility authorizations.
- Monitoring and auditing agency adherence to flexibility authorizations.
- Communicating to agencies any concerns with the use of the flexibility authorization.
- As appropriate, limiting or restricting flexibility authorizations for any agencies that do not fully comply with this Policy.
- Auditing the documentation for pay decisions.

Agencies are responsible for:

- Establishing procedures for identifying and determining the priority and fiscal feasibility of implementing pay decisions.
- Timely completing electronic forms related to this policy and entering documented actions into the OSHR-designated state system of record to ensure consistency across agencies and the ability to track agency and statewide metrics.
- Regularly monitoring internal pay equity and ensuring pay decisions in a fair and defensible manner.
- Monitoring turnover, recruitment, and other trends.
- Developing procedures for reviewing and monitoring agency pay administration practices.
- Training agency leadership and Human Resources staff in applying the pay administration process under this Policy.
- Signing and adhering to flexibility authorizations for the agency.
- Seeking adjustments to the flexibility authorizations, where appropriate.
- Sharing with OSHR when key pay administration staff have separated from the agency, and notifying OSHR if any part of the flexibility authorization should be temporarily suspended because of vacancies or leaves of absence.
- Alerting OSHR about staff changes in subject-matter areas.
- Developing consistent pay administration practices which align with the state compensation philosophy and pay administration policy.
- Administering and ensuring compliance with this policy within their agency. This includes making sure that pay decisions are consistent with Steps 1 to 4 described in this Policy and that decisions are fully documented.

Pay Administration Policy (cont.)

§ 9. Miscellaneous Terms

§ 9.1. Effective Date and Duration

This Policy is effective June 1, 2022. It shall remain in effect until rescinded.

§ 10. Sources of Authority

This Policy is issued under N.C.G.S. § 126-4(1), (2), (3), and (6).

§ 11. History of This Policy

Date	Version
April 14, 2022, effective June 1, 2022	• First version. New policy developed from segments of several prior policies. (Where material was moved into this new policy, that material has been removed from the other policies.) • Text revised to more clearly show how HR staff can use salary administration as a flexible tool to meet needs. Emphasis placed on agencies developing documentation to demonstrate the justification for salary administration decisions.
October 13, 2022	• Added provisions on geographic differentials, special assignment pay, and acting pay.
December 8, 2022 (effective February 15, 2023)	• Provided more information on trainee progressions, including allowing trainees to be paid up to the top of the first quartile so long as they would not be paid more than other existing non-trainee employees in the classification.
July 11, 2024 (effective September 1, 2024)	• Added a new section (§ 5.1) about the effective date of salary adjustments. ○ In-range salary adjustments shall be made effective on a current basis, and agencies shall make every effort to ensure employees receive salary adjustments in a timely manner. ○ A retroactive discretionary salary adjustment will require OSHR approval if its effective date is older than 90 days. ○ Several exceptions are listed in section 5.1 of the policy.

Pay Administration Policy (cont.)

	• Added a new sentence to section 6.4 of the policy, which is about special assignment pay. Under the new sentence, OSHR and the agency shall agree on the classifications eligible for special assignment pay.

Paid Parental Leave Policy

Contents:

Note: The new law on paid parental leave for state employees, G.S. 126-8.6, became effective July 1, 2023. Section 126-8.6 was revised by 2023 House Bill 190, Session Law 2023-65, before its effective date. This version of the Paid Parental Leave Policy includes the effect of the House Bill 190 revisions. To implement section 126-8.6, the State Human Resources Commission expects to adopt temporary rules on paid parental leave. These temporary rules are expected to go into effect in August or September 2023, under the schedule and process provided in the Administrative Procedure Act. A permanent rule will then be issued for public notice and comment. This policy will be updated after each rule becomes effective.

§ 1. Purpose

Paid Parental Leave is designed to promote families' physical and mental health, increase worker retention, and improve worker productivity and morale. In accordance with N.C.G.S. § 126-1 and 126-8.6, the Office of State Human Resources has established the following policy to provide guidance to agencies regarding the Paid Parental Leave programs.

Paid Parental Leave Policy (cont.)

§ 2. Covered Employees

An employee's eligibility for Paid Parental Leave shall be determined based on the employee's months of service and hours of work as of the date of the qualifying life event. Employees who become parents via childbirth, adoption, foster care, or another legal placement are eligible if:

- Employee is full-time or part-time (regardless whether half-time or more) in a permanent, probationary, or time-limited appointment.
- For the immediate 12 preceding months, employee has been employed without a break in service[1] by the State of North Carolina in a permanent, time-limited, or probationary appointment.
    - Periods of worker's compensation or short-term disability in the 12 months preceding the qualifying events do not make the employee ineligible for paid parental leave.
    - Periods of leave without pay, as defined in 25 NCAC 01E .1100 and the Leave Without Pay Policy, shall not constitute a break in service.[2]
- Employee must be eligible for Family and Medical Leave (FML) by being in pay status for at least 1,040 hours in the previous twelve-month period.
    - Whether an employee exhausted FML does not affect eligibility for paid parental leave.

Temporary employees are not eligible to participate in this program.

§ 3. Definitions

For purposes of this policy, the terms below mean the following:

State Agency: Any State agency, department, institution, office, board, or commission, including institutions and offices of the University of North Carolina, but excluding the legislative branch, the judicial branch, community college institutions, and public schools. Whether an agency is covered by N.C.G.S § 126-8.6 and this Policy does not

[1] Under 25 NCAC 01D .0114, "A break in service shall be deemed to occur when an employee is not in pay status, as defined in 25 NCAC 01D .0105, for more than 31 calendar days." Pay status is defined to mean, "An employee shall be deemed to be in pay status when working, when on paid leave, when exhausting vacation or sick leave, or when on workers' compensation leave." 25 NCAC 01D .0105(a).
[2] 25 NCAC 01D .0114.

Paid Parental Leave Policy (cont.)

depend on whether its employees are otherwise subject to the State Human Resources Act, N.C.G.S. Chapter 126.

Eligible State Employee: A full-time or part-time employee in a permanent, probationary, or time-limited appointment who has been employed without a break in service by the State of North Carolina in a permanent, time-limited, or probationary appointment for the immediate twelve (12) preceding months and who is eligible for Family and Medical Leave (FML) by being in pay status for at least 1,040 hours in the previous twelve-month period, as set forth in 25 N.C. Admin. Code 01E .1402(a).

Parent: Either (a) the mother or father of a child through birth or legal adoption, or (b) an individual who cares for a child through foster or other legal placement under the direction of a government authority.

Child: A newborn biological Child or a newly-placed adopted, foster or otherwise legally placed Child under the age of eighteen (18), whose Parent is an Eligible State Employee.

Paid Parental Leave: 100% paid leave to be provided to an Eligible State Employee either (a) upon the Eligible State Employee giving birth for both recuperation during the disability period and bonding with a newborn Child, or (b) to other Eligible State Employees to care for and bond with a newborn Child or newly adopted, foster or otherwise legally placed Child.

Note: Agencies granting parental leave must uphold the principle of equal treatment. *See* Equal Employment Opportunity Commission, *Enforcement Guidance on Pregnancy Discrimination and Related Issues*, Section I(C)(3) (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues. For example under G.S. 126-8.6, the birth mother receives four (4) weeks for recuperation and recovery and four (4) weeks for parental bonding leave, which is equal to the four (4) weeks the other parent receives for parental bonding leave. The non-birth parent did not give birth, so they are not receiving unequal treatment by not receiving recuperation and recovery leave. Alternatively, equal treatment could be structured as both parents receiving eight (8) weeks of parental, bonding leave, which matches the optional alternative form of leave authorized under § 8.2 of this Policy.

Paid Parental Leave Policy (cont.)

Public Safety Concern: A significant impairment to the State Agency's ability to conduct its operations in a manner that protects the health and safety of North Carolinians. The extension of Paid Parental Leave to an Eligible State Employee may constitute a Public Safety Concern if:

(1) Providing the Paid Parental Leave would result results in State Agency staffing levels below what is required by federal or state law to maintain operational safety; or

(2) Providing the Paid Parental Leave may impact the health or safety of staff, patients, residents, offenders, or other individuals the State Agency is required by law to protect; and

(3) The State Agency has been unable to secure supplemental staffing after requesting or diligently exploring alternative staffing options.

Qualifying Event: When an Eligible State Employee becomes a Parent to a Child.

§ 4. OSHR Responsibilities

- Develop and disseminate the rule and policy on the administration of Paid Parental Leave to include how this leave interacts with FML and other leave as applicable.
- Collaborate with State Agencies to ensure State Agency employees, management and staff receive information about and understand the obligations and rights contained in the Paid Parental Leave Policy.
- Report to the Office of the Governor on usage of Paid Parental Leave by September 1 of each year.
- Initiate any additional steps necessary to provide guidance in administering Paid Parental Leave.

§ 5. Agency Responsibilities

- Provide required documentation to employees for completion of the certification process.
- Upon receiving a request for Paid Parental Leave and documentation from the Eligible State Employee, the agency must respond within 5 business days. *See* § 9.3 of this Policy for how the agency must respond.
- There can be no disciplinary actions taken against the employee for being absent while on paid parental leave. However, this provision does not prevent the employee from receiving disciplinary actions for conduct/performance as long as it

Paid Parental Leave Policy (cont.)

is not related to the four or eight weeks of paid parental leave unless there is evidence of fraudulent use.

- Employees that have begun approved paid parental leave should not be required to return to work early due to staffing issues.
- Disseminate information concerning the Paid Parental Leave Program to new and existing employees.
- Agencies shall report Paid Parental Leave activities to the Office of State Human Resources by August 1st of each year.
- If the State Agency delays or denies any Paid Parental Leave requests due to Public Safety Concerns, the State Agency must develop a written internal policy and procedure that identifies the criteria that the State Agency will use to provide consistent treatment for all similarly situated employees.
- If the State Agency provides additional leave under the optional authority provided in this Policy, submit to the Office of State Human Resources a written request, signed by the Agency Head (or designee), to develop a Paid Parental Leave program. This must include a copy of the policies and procedures for review.

§ 6. Employee Responsibilities

- Whenever possible, employees shall be required to submit a written request to notify their Employing State Agency ten (10) weeks in advance of their intention to use Paid Parental Leave so that the State Agency may secure backfill coverage.
- Employees may withdraw their request for Paid Parental Leave at any time.
- Employees shall be required to comply with agency leave request procedures, absent unusual circumstances.
- Employees shall be required to submit documentation as listed in § 7 below. State Agencies may take appropriate action if there is evidence that the employee fraudulently requested, used, or otherwise abused Paid Parental Leave. This action may include revoking approval and disciplinary action up to and including dismissal.

Paid Parental Leave Policy (cont.)

§ 7. Certification of Eligibility for Paid Parental Leave

Eligible State Employees shall be required to certify that they will use Paid Parental Leave to give birth to a Child or will use Paid Parental Leave to care for or bond with a Child.

Employees may be required to submit documentation of the birth or placement (if applicable). The initial certification form may be required before the Qualifying Event (unless a birth comes unexpectedly), while the documentation of the birth or placement will be required at a reasonable time after the Qualifying Event. Official documents may include but are not limited to:

Qualifying Event	Acceptable Documentation
Adoption	• Adoption Order • Proof of Placement
Birth	• Birth Certificate or Report of Birth • Certified DNA Results • Custody Order
Foster Placement	• Foster Care Placement Agreement • Custody Order • Proof of Placement
Other Legal Placements	• Custody Order • Proof of Placement

Documents provided must show the date of birth or date of placement, if placement was a date other than the date of birth. The name of the legal Parent must appear on some legal document establishing the birth or placement, such as the birth certificate, a legal document establishing paternity, or a legal document establishing adoption.

§ 8. Leave Available

Unless otherwise stated, the amounts of leave listed below are for a full-time employee. See the section on part-time employees below for the leave available to part-time employees.

Note on Sunset Date of Section 8.2 of This Policy:

Paid Parental Leave Policy (cont.)

When the Human Resources Commission's Paid Parental Leave Policy went into effect in 2019, it offered agencies two options for paid parental leave offered to employees. Almost all agencies selected the option that is reflected in Section 8.1 below. One agency and one commission selected the option reflected in Section 8.2. The May 2023 law on paid parental leave, G.S. 126-8.6(b), matches the structure in Section 8.1 of this policy. The 2023 law does not rescind the Commission's pre-existing authority to issue policies on paid parental leave, but to best match the new law, and to create a uniform policy for state agencies, Section 8.2 will expire February 16, 2024, nine months after the date when G.S. 126-8.6 went into effect.

§ 8.1. **Leave Available Under G.S. 126-8.6**

As a minimum, the leave provided under this § 8.1 of this Policy must be provided by all State Agencies to their Eligible State Employees who are subject to G.S. 126-8.6.

All Paid Parental Leave arrangements shall be written and include the responsibilities of both the agency and the employee. Each participant in the Paid Parental Leave arrangement must sign the document that contains the terms of the Paid Parental Leave arrangement. At a minimum, the document shall define the parameters of the Paid Parental Leave arrangement and shall comply with the policy provisions below:

1. Compensation and Benefits: Each week of Paid Parental Leave will be compensated at 100% of the employee's regular, straight-time weekly pay (to exclude shift differential, premium pay, or overtime).
2. State Agencies shall provide four (4) weeks (160 hours) of Paid Parental Leave to Eligible State Employees who have given birth for recuperation during the disability period.
3. In addition, State Agencies shall provide four (4) weeks (160 hours) of Paid Parental Leave to Eligible State Employees for bonding with a newborn child.
4. Parents shall certify that Paid Parental Leave past the recuperation and recovery stage of childbirth is being utilized for bonding with the Child.

Paid Parental Leave Policy (cont.)

§ 8.2. **Optional Alternative Parental Leave Program (available only for qualifying events on or before February 16, 2024)**

Note:

The Paid Parental Leave structure under this Section 8.2 is available only for Qualifying Events that take place on or before February 16, 2024. As long as the Qualifying Event takes place by that date, the leave can continue through and beyond February 2024.

For Qualifying Events that take place after February 16, 2024, employees may take Paid Parental Leave under Section 8.1, above.

As an alternative program, State Agencies may provide the same amount of Paid Parental Leave to parents who gave birth and parents who did not give birth. In this alternative, optional program:

All Paid Parental Leave arrangements shall be written and include the responsibilities of both the agency and the employee. Each participant in the Paid Parental Leave arrangement must sign the document that contains the terms of the Paid Parental Leave arrangement. At a minimum, the document shall define the parameters of the Paid Parental Leave arrangement and shall comply with the policy provisions below:

1. Compensation and Benefits: Each week of Paid Parental Leave will be compensated at 100% of the employee's regular, straight-time weekly pay (to exclude shift differential, premium pay, or overtime).
2. State Agencies shall provide eight (8) weeks (320 hours) of Paid Parental Leave to Eligible State Employees to care for and bond with a newborn Child or newly adopted, foster or otherwise legally placed Child. The amount of Paid Parental Leave awarded through this alternative program shall not exceed eight (8) weeks to Eligible State Employees for birth, adoption, foster or otherwise legal placement of a Child.
3. Parents shall certify that Paid Parental Leave is being utilized for bonding with the Child.

Paid Parental Leave Policy (cont.)

§ 8.3. **Leave for Part-Time Employees**

Leave for part-time employees will be prorated from the State Agency's standard amount of Paid Parental Leave, as listed above, corresponding to the percentage of hours they normally are scheduled to work.

Note on Effective Date of this Section:
The changes to Section 8.3 of this policy, on the amount of leave for part-time employees, reflect the changes to the paid parental leave law, G.S. 126-8.6, that were made by 2023 House Bill 190, Session Law 2023-65. Therefore, the changes to this section (and this section only) are retroactive to House Bill 190's effective date, July 1, 2023. The changes made by House Bill 190 removed the "not to exceed" limit in G.S. 126-8.6 that would have caused some part-time employees to receive less than a prorated amount of leave.

§ 9. Requesting Use of Paid Parental Leave

§ 9.1. **Type of Leave**

Eligible State Employees may take Paid Parental Leave in one continuous period or may take intermittent use of Paid Parental Leave. Requests for intermittent use of paid parental leave are subject to the agency's approval as stated below.

§ 9.2. **Notification about Intent to Use Leave**

Whenever possible, Eligible State Employees shall notify their employing agencies at least 10 weeks in advance of their intention to use Paid Parental Leave. This requirement is so that agencies can secure backfill coverage.

§ 9.3. **Agency Response**

The agency shall respond in writing to the employee as promptly as possible, and in no fewer than two weeks from the date of receipt.

For employees who gave birth -- The agency shall not deny, delay, or require intermittent use of paid parental leave to Eligible State Employees who have given birth, so long as they seek to use the paid parental leave in one continuous period. If an employee

Paid Parental Leave Policy (cont.)

who gave birth wishes to use intermittent, rather than continuous, Paid Parental Leave, the agency may work with the employee on timing as listed below.

For all other employees – This paragraph applies only to Eligible State Employees who either (1) are not birthing parents or (2) are seeking intermittent leave. For these parents, the agency may delay providing Paid Parental Leave or may provide Paid Parental Leave intermittently if it determines that providing the leave will cause a Public Safety Concern.

If the State Agency determines that it must delay Paid Parental Leave, or make Paid Parental Leave intermittent, because of a Public Safety Concern, the agency shall provide Paid Parental Leave as soon as practical following the Qualifying Event.

If both parents are Eligible State Employees, each may receive Paid Parental Leave. Both parents may take their leave simultaneously or at different times, pending no Public Safety Concern.

§ 10. Leave Usage

- Paid Parental Leave may be used only once for a Qualifying Event within a twelve-month period. The fact that a multiple birth, adoption or other legal placement occurs (e.g., the birth of twins or adoption of siblings) does not increase the total amount of paid parental leave granted for that event.
- Unused Paid Parental Leave is forfeited twelve (12) months from the date of the Qualifying Event.
- Paid Parental Leave shall not accrue or be donated to another state employee.
- Eligible State Employees may not use accrued sick leave, annual leave or other leave in lieu of Paid Parental Leave.
- Paid Parental Leave shall not be counted against or deducted from the eligible state employee’s accrued leave balances.
- Employees shall not be paid for the leave provided by this Section upon separation from the employer. The leave provided by this Section shall not be used for calculating an employee’s retirement benefits and shall not accrue or be donated as voluntary shared leave.
- Leave usage must be recorded in same required increments as all other time.

Paid Parental Leave Policy (cont.)

- Paid parental leave provided under this Section shall be reported separately from all other paid leave. Employees and supervisors are responsible for accurate reporting of the use of this leave on the employee's time record.
- If the employee requires leave before the actual birth or adoption due to medical reasons or to fulfill legal adoption obligations, other available leave balances shall be utilized in accordance with the State Agency's leave policies. Paid Parental Leave shall not be used prior to the Qualifying Event.

§ 11. Relationship to Family and Medical Leave

- Employees using Paid Parental Leave are afforded the remaining job protection under Family and Medical Leave (FML) for an absence up to a total of twelve (12) weeks (480 hours). They may charge personal leave or take leave without pay to cover the additional absence.
- An employee shall be eligible for Paid Parental Leave even if the employee has exhausted FML time consistent with the law covering FML.
- If an employee becomes eligible for FML while on Paid Parental Leave, the employee must apply for and use FML and the leave runs concurrently with FML.

§ 12. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-8.6 (N.C. Session Law 2023-14 @ page 30)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1901-.1908 (Temporary Rules)

§ 13. History of This Policy

Date	Version
August 1, 2019	First version. Pilot of Paid Parental leave Policy aligned with Executive Order 95, "Providing Paid Parental Leave to eligible state employees," signed by Governor Roy Cooper on May 23, 2019, provides eight (8) weeks of fully paid parental leave to eligible state employees who have given birth to a child and four (4) weeks of

Paid Parental Leave Policy (cont.)

	fully paid parental leave to eligible state employees in other circumstances involving the birth of a child to those employees, or the adoptive, foster or other legal placement of a child with an eligible state employee.
October 7, 2021	Update the policy to exclude the work "probationary" from the body of the policy as related to "Covered Employees" to alleviate confusion of who is eligible to be awarded the benefit.
June 13, 2023 (effective July 1, 2023)	Added to the policy material from the existing OSHR guidelines establishing implementation procedures. In addition, revised the policy to reflect the terms of new G.S. 126-8.6, which becomes effective July 1, 2023. The new law generally matches Paid Parental Leave policies and procedures under Executive Order 95 and the previous version of this policy. The primary differences are in Paid Parental Leave for part-time employees; to reflect these differences, the policy terms on part-time employees have been revised to reflect the terms of G.S. 126-8.6. The new law requires OSHR to adopt "rules and policies" on Paid Parental Leave. As a result, OSHR will engage in temporary and permanent rulemaking on Paid Parental Leave, and this policy will be updated after rules go into effect.
August 7, 2023	• Set a sunset date of February 16, 2024 for the alternative Paid Parental Leave structure provided in Section 8.2 of the policy. See the note at the beginning of Section 8 describing the reasons for this change. • In Section 8.3, changed the Paid Parental Leave formula for part-time employees to reflect statutory revisions in 2023 House Bill 190, Session Law 2023-65. The changes to Section 8.2 (and only those changes) are retroactive to the House Bill 190 effective date, July 1, 2023. • In Section 9.3, clarified that the agency must respond in writing to an employee who has requested Paid Parental Leave.

Personal Observance Leave Policy

Contents:

Note: This is an opt-in policy for state agencies. It applies to all Cabinet agencies, but is optional for non-Cabinet agencies. Employees of non-Cabinet agencies should check with their agency's Human Resources Office to see if this policy applies to them.

§ 1. Introduction

Executive Order No. 262 (the "Executive Order") provides up to eight hours of fully paid leave to eligible employees for a day of personal observance to utilize on a day of significance, including days of cultural, religious, or personal observation. The Executive Order applies to Cabinet Agencies and any other state agencies that voluntarily adopt the Executive Order's measures.

The State of North Carolina supports a work environment that fosters respect and values all people regardless of their race, color, religion, sex (including pregnancy), national origin, age, genetic information, disability, sexual orientation, gender identity and expression, or veteran or National Guard status. The Office of State Human Resources ("OSHR") seeks opportunities to promote diversity and inclusion at all occupational levels of State government's workforce through Equal Employment Opportunity ("EEO") initiatives.

The State of North Carolina strives to be an employer of choice, including recruiting and retaining a diverse workforce and creating an inclusive environment. The State employs a robust and diverse workforce, reflecting the multiple cultural and religious communities of our State. Because of the diversity of State employees, there are many different days of

cultural or religious significance in our workforce. Moreover, some employees may have days of personal significance that are their own, outside of any cultural or religious tradition. The Participating Agencies that have joined this Policy seek to ensure that employees have an opportunity to observe these days of personal, cultural, or religious importance.

As authorized by Section 1 of the Executive Order, this Policy establishes further details to implement the Personal Observance Leave provided under the Executive Order. This Policy may be amended in the future.

§ 2. Definitions

Following are definitions of terms used in this policy:

Cabinet Agencies: Those agencies that are part of the Governor's Office or are headed by members of the Governor's Cabinet.

Executive Order: Executive Order No. 262.

Participating Agency: A state agency, commission, board, or office which provides paid leave under this Policy for eligible employees. Participating Agencies include all Cabinet Agencies. Participating Agencies also include any other state agencies that voluntarily adopt this Policy.

Policy: This policy on Personal Observance Leave.

Personal Observance Leave: Leave provided under the terms of this Policy.

§ 3. Eligible Types of Employees

Personal Observance Leave is available only to employees of a Participating Agency who are permanent, probationary, or time-limited. Temporary employees, interns, and contractors are not eligible for Personal Observance Leave.

To be eligible for Personal Observance Leave, employees must be either

(a) full-time or

(b) part-time with a schedule that is at least half-time. Part-time employees are not eligible for Personal Observance Leave if they work less than half-time.

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§ 4. Amount of Leave

Full-time employees will receive eight hours of Personal Observance Leave each calendar year. Part-time employees will receive a prorated amount based on their number of hours compared to a full-time schedule.

§ 5. Use of Leave

§ 5.1. When the Leave Can Be Used

Personal Observance Leave may be used for any single day of personal significance. This includes, but is not limited to, days of cultural or religious importance. The day used for

Personal Observance Leave does not have to be a day from the employee's own religious or cultural background.

The total amount of Personal Observance Leave awarded to an employee must be utilized in one work shift. Employees may use Personal Observance Leave prior to exhausting any accumulated compensatory time (comp time).

Employees may use their allotment of Personal Observance Leave beginning June 16, 2022, or on an earlier date announced by OSHR if the Personal Observance Leave can be coded and made available sooner.

§ 5.2. Arranging to Take the Day of Leave

Employees should request Personal Observance Leave at least two weeks before the leave is needed unless such notice is impractical. Regardless of the employee's religious or cultural background, any day that the employee identifies as significant for cultural, religious, or personal reasons qualifies under this Executive Order and the Policy. Agencies must not question whether an employee's identification of a particular day for Personal Observance Leave is sincere and legitimate.

Agencies should, to the greatest extent possible, allow employees to use the leave at the time requested. However, the supervisor or other manager may require that the Personal Observance Leave be taken at a time other than the one requested, based on the needs of the agency.

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Supervisors are encouraged to accommodate employees who may want to recognize the same day for Personal Observance Leave. However, when necessary to avoid impact to agency services, supervisors may ask employees to take their leave on different days.

§ 6. How Personal Observance Leave is Credited during Hire and Transfer

Employees who join the Participating Agency during the calendar year will be eligible for the full amount of Personal Observance Leave provided under this Policy to be used in that calendar year. The following business processes apply for existing employees, new hires, and reinstatements:

- At the time this Policy goes into effect, eligible employees at Participating Agencies will be credited with leave.
- Newly hired employees shall be credited with leave immediately upon their employment with a Participating Agency.
- Separated employees that are re-employed within the same calendar year with a Participating Agency will receive the same amount of leave as a newly hired employee unless they previously utilized the leave within the same calendar year.

For transfers between Participating Agencies and non-participating agencies, the following business processes apply:

- If an employee moves from one Participating Agency to another Participating Agency within the calendar year, unused Personal Observance Leave will transfer to the employee's new agency.
- If an employee moves from a Participating Agency to a non-participating agency, unused Personal Observance leave will not transfer to the non-participating agency.
- If an employee moves from a non-participating agency to a Participating Agency, the employee will receive leave as a newly hired employee, as indicated in above.

§ 7. Other Limitations

- Personal Observance Leave not taken by the end of the calendar year is forfeited; it shall not be carried into the next calendar year.
- Personal Observance Leave has no cash value and cannot be converted into retirement credit. Employees shall not be paid for unused Personal Observance Leave at

separation. This leave shall not be payable upon death of an employee during state service.

- Personal Observance Leave shall not be applied to existing negative leave balances. This leave shall not be donated under the Voluntary Shared Leave policy.
- This leave may not be used for the same purposes as sick leave.

§ 8. The Agencies Where This Policy Applies

This Policy automatically applies to Cabinet Agencies. It also applies to state agencies, commissions, boards, or offices that choose to adopt this Policy (either in whole or with any modifications). Non-Cabinet agencies may adopt this Policy and become a Participating Agency by sending a letter or email to OSHR's Chief Deputy Director, Glenda Farrell. The request should include the phrase "Personal Observance Leave Policy" in the subject line.

§ 9. Effective Date and Modification

This Policy becomes effective on the date when it is issued. It may be modified or rescinded by the Director of State Human Resources (for Cabinet Agencies) or agency head (for non-Cabinet Participating Agencies) for any reason.

§ 10. Miscellaneous Terms

§ 10.1. No Private Right of Action

This Policy is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

§ 10.2. Savings Clause

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision

or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

§ 11. Sources of Authority

- This Policy was previously adopted by many state agencies under N.C.G.S. § 143B-10(j)(3), Article III of the Constitution of North Carolina, N.C.G.S. §§ 143A-4, 143B-4, § 147-12, and 25 N.C. Admin. Code 01E .0101 and 01L .0101

  This policy is issued under any and all of the following sources of law:

- The State Human Resources Commission adopts this policy under N.C.G.S. § 126-4(5), which authorizes the Commission, subject to the approval of the Governor, to establish policies and rules governing hours and days of work, vacation, and other matters pertaining to the conditions of employment.

  It is compliant with the Administrative Code rules at:

  - 25 NCAC 01E .0101 and 25 NCAC.01L .0101

§ 12. History of This Policy

Date	Version
June 6, 2022	Initially adopted by state agencies as an agency policy under N.C.G.S. § 143B-10(j)(3) and other statutes. First version of policy.
July 14, 2022	Adopted as a State Human Resources Commission policy. No changes to text, except for an explanatory note at the beginning and revised “sources of authority” and “policy history” sections at the end.

Personnel Records Policy

Contents:

§ 1. Policy

Such personnel records as are necessary for the proper administration of the personnel system shall be maintained.

Article 7, N.C.G.S. § 126, prescribes the basic provision for maintenance and use of State employee personnel records, with the Human Resources Commission establishing rules and regulations for the safekeeping of such records.

§ 2. Coverage

These provisions apply to:

- State employees,
- former State employees, and
- applicants for employment.

§ 3. Definition of Personnel Files

For purposes of this policy, a personnel file consists of any employment-related or personal information gathered by the agency, the Retirement Systems Division of the Department of State Treasurer, or by the Office of State Human Resources.

Personnel Records Policy (cont.)

Employment-related information includes information related to an individual's:

- application;
- selection;
- promotion, demotion, transfer;
- salary and leave;
- contract for employment,
- benefits,
- performance evaluation; and
- suspension, disciplinary actions, and termination.

Personal information includes an individual's:

- home address,
- social security number,
- medical history,
- personal financial data,
- • marital status, dependents and
- beneficiaries.

§ 4. **Records open to Inspection**

The following information on each employee shall be maintained and open for inspection:

(1) Name.
(2) Age.
(3) Date of original employment or appointment to State service.
(4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
(5) Current position.
(6) Title.
(7) Current salary (includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation).

Personnel Records Policy (cont.)

(8) Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.

(9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.

(10) Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau.

(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.

(12) The office or station to which the employee is currently assigned.

§ 5. **Confidential Information**

All employment-related and personal information in an employee's personnel file not specified under "Records Open for Inspection" is confidential.

Agencies shall maintain in personnel records only information that is relevant to accomplishing personnel administration purposes. Information obtained regarding the medical condition or history of an applicant that is collected by the agency must be maintained in a separate file in compliance with the Americans with Disabilities Act (42 U.S.C. § 12112 and 29 CFR § 1630.14(d)(4)).

Voluntary self-identification of disability information shall be stored in a "data analysis" file (41 CFR § 60-741.42(e)). This file shall not be part of the employee's personnel file or medical file. This file may be part of the existing Human Resource Information System or Applicant Tracking System, provided the disability-related date are stored securely, apart from other personnel information, so confidentiality is maintained. Access to this data shall be limited to personnel who need to know the information.

Advisory Note: Agencies should be aware that there may be information physically kept in an employee's personnel file that does not fall into any of the categories in § 4 (e.g., information about

Personnel Records Policy (cont.)

an employee's benefits.) If a public records request is made for any information that is kept in an employee's personnel file, and that information is not open for inspection under G.S. 126-23, the agency should get both the consent of the employee and the advice of counsel before releasing such information.

§ 6. **Required Access to Information**

The information listed in § 4 above shall be made available for inspection and examination and copies thereof made by any persons during regular business hours, subject to the following provisions:

- All disclosures of records shall be accounted for by keeping a written record of the following information: Name of employee, information disclosed, date information requested, name and address of the person to whom the disclosure is made (if the person requesting the information is willing to provide such information). The information must be retained for a period of two years. This does not apply to the processing of personnel records, to public record data requests seeking for more than five employees the production of the non-confidential data listed in § 4 above, or to routine credit references.
- Upon request, the record of disclosure shall be made available to the employee to whom it pertains.
- An individual examining a personnel record may copy the information; any available photocopying facilities may be provided and the cost may be assessed to the individual.
- Any person denied access to any records shall have a right to compel compliance with these provisions by application to a court for a writ of mandamus or other appropriate relief.

§ 7. **Access to information used for personnel actions**

Information used in making a determination about employment or other personnel actions should, to the extent practical, be obtained directly from the individual. There may be instances where it is necessary to obtain information from other sources. This may be obtained either directly from those sources or by the use of a consumer reporting agency.

Personnel Records Policy (cont.)

If the consumer reporting agency is utilized, the requirement of the Fair Credit Reporting Act, Title VI of The Consumer Credit Protection Act (Public Law 91-508) must be followed.

- When a consumer reporting agency furnishes a report and employment, promotion, or reassignment is denied on the basis, in whole or in part, of information in the report, the applicant or employee must be informed and given the name and address of the consumer reporting agency. The appointing authority does not have to reveal the contents of the report.
- When an investigative consumer report is requested from a consumer reporting agency, the individual must be notified within three days, and told that he/she can make a written request for the "nature and scope" of the investigation. "Nature and scope" includes a description of the questions asked, disclosure of numbers and types of persons interviewed, and the name and address of the investigating agency.

§ 8. All information available to certain persons

All information in an employee's personnel file shall be open for inspection and examination to the following persons:

- The supervisor of the employee: for this purpose, supervisor is any individual in the chain of administrative authority above a given State employee within a pertinent State agency.
- Members of the General Assembly (authority N.C.G.S. § 120-19).

Advisory Note: G.S. 120-19 provides as follows: Except as provided in N.C.G.S. 105-259, all officers, agents, agencies and departments of the State are required to give to any committee of either house of the General Assembly, or any committee or commission whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or one of its standing committees or the chair of a standing committee.

- A party by authority of a proper court order.

Personnel Records Policy (cont.)

- An official of an agency of the Federal government, State government or any political subdivision thereof. An official is a person who has official or authorized duties on behalf of an agency; it does not imply a necessary level of duty or responsibility. Such an official may inspect any personnel records when such inspection is deemed by the department head to be necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution or a tax investigation This right to access includes the circumstances where one State agency is considering for employment a person who is or has been employed in another State agency; the head of the latter agency may release to an official of another agency information relative to the employee's job performance.
- The employee, or his/her properly authorized agent. The personnel file may be examined in it entirety except for:
  - Letters of reference solicited prior to employment
  - Information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. The medical record may be disclosed to a licensed physician designated in writing by the employee. When medical information is obtained on any employee, the physician should indicate any information that should not be disclosed to the employee.
- A party to a quasi-judicial hearing of a State agency, or a State agency which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion.

§ 9. Releasing Confidential Information

Each individual requesting access to confidential information will be required to submit satisfactory proof of identity.

Personnel Records Policy (cont.)

A record shall be made of each disclosure (except disclosures to the employee and his or her supervisor) and the record shall be placed in the employee's file.

A department head may, under the conditions specified, take the following action with respect to an applicant, employee or former employee employed by or assigned to that department, or whose personnel file is maintained in the department.

- In his/her discretion, the department head may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that inspection is essential to maintaining the integrity of such department or maintaining the level or quality of services provided by such department.
- Under the circumstances above, the department head may, in his/her discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or non-employment of such applicant, employee, or former employee or other confidential matters contained in the personnel file.
- Provided that prior to releasing such information or making such file or portion thereof available as provided herein, such department head shall prepare a memorandum setting forth the circumstances that the department has determined requires such disclosure, and the information to be disclosed, with a copy of the memorandum sent to the employee and the memorandum retained as a public record in the files of the department head

§ 10. **Records of former employees and applicants for employment**

The provisions for access to records apply to former employees and applicants the same as they apply to present employees. Personnel files of former State employees who have been separated from State employment for ten or more years may be open to inspection and examination except for papers and documents relating to demotions and to disciplinary actions resulting in the dismissal of the employee.

Personnel Records Policy (cont.)

§ 11. **Remedies of employees objecting to material in files**

An employee who objects to material in his/her file may place a statement in the file relating to the material to which the employee objects. An employee may seek the removal of what the employee alleges to be inaccurate or misleading material in his/her personnel file in accordance with the grievance procedure of that agency; however, the employee does not have the right to appeal to the Office of Administrative Hearings. Also, an employee does not have the right to appeal the contents of a performance appraisal or a written warning.

§ 12. **Safeguarding confidential information**

In order to ensure the security and confidentiality of records, each agency shall establish administrative, technical, and physical controls to protect confidential information from unauthorized access or disclosure.

§ 13. **Penalty for permitting access to confidential file by unauthorized person**

N.C.G.S. § 126-27 provides that any public official or employee who permits any person to have access to or custody or possession of any portion of a personnel file designated as confidential, when that person is not specifically authorized to have access to the information, is guilty of a misdemeanor; upon conviction he/she shall be fined in the discretion of the court but not in excess of $500.

§ 14. **Penalty for examining, copying, etc., confidential file without authority**

N.C.G.S. § 126-28 provides that any person, not specifically authorized to have access to a personnel file designed as confidential, who examines in its official filing place, removes, or copies any portion of a confidential personnel file, is guilty of a misdemeanor; upon conviction he/she shall be fined in the discretion of the court but not in excess of $500.

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§ 15. Sources of Authority

- N.C.G.S. § 126-4; Article 7
- 25 NCAC 01C .0300

§ 16. History of This Policy

Date	Version
April 15, 1960	New policy on privacy of personnel records to conform to legislation.
January 1, 1976	New policy on privacy of personnel records to conform to legislation.
July 1, 1977	Deletes requirement that recordkeeping on disclosures of routine credit references be required to be kept in personnel files.
October 1, 1977	Deletes requirement that recordkeeping on disclosures of routine credit references be required to be kept in personnel files.
December 1, 1978	Privacy of Employee Records. Provides that a department head can release information about an employee or give access to a personnel record when it is determined that inspection or access is essential to maintaining the integrity of a department or maintaining the level or quality of services provided by such department. AND provides that where one State agency is considering for employment a person who is or has been employed in another State agency that the intent of the law is that the head of the latter State agency may release to an official information relative to an employee's job performance.
October 1, 1986	Statutory reference corrected from N.C.G.S. § 126-8 to 126-28 under "Penalty for examining, copying, etc., confidential file without authority."
April 1, 2005	Clarify language under "Confidential Information."
August 30, 2007	Revised to conform to legislative changes to N.C.G.S. § 126-22 and N.C.G.S. § 126-23

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	1) N.C.G.S. § 126-22 amended to redefine “personnel file” to include contracts and the employee’s personal information. (S1546) 2) N.C.G.S. § 126-23 amended to include contracts as public information and to define the term “salary” to include pay, benefits, incentives, bonuses, and deferred and all other forms of compensation. (S1546)
October 1, 2010	House Bill 961 amended N.C.G.S. § 126-23 to make public the following items that were previously considered confidential: (1) Date and amount of each increase or decrease in salary, (2) date and type of each promotion, demotion, transfer, suspension, separation or other change, (3) date and general description of the reasons for each promotion, and (4) date and type of each dismissal, suspension, or demotion for disciplinary reasons. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.
November 1, 2013	N.C.G.S. § 126 was changed regarding remedies employees have for objecting to material in their file • An employee no longer has appeal rights beyond the agency when seeking to remove inaccurate or misleading material for their file.
July 14, 2022	Confidential record section was updated to clarify that any agency asking for a voluntary self-identification of disability must keep the information in a “data analysis” file that is not part of the personnel file or medical record of the employee.

Agency Performance Management Policy

Contents:

§ 1. Policy

It is the policy of North Carolina State Government to provide a performance management system which evaluates employees' accomplishments and behaviors related to goals and values associated with the mission, goals, and business objectives of the organization. An integrated performance management system enables employees to develop and enhance individual performance while contributing to the achievement of the organizational mission, goals, and business objectives. Each agency shall implement the Performance Management Policy as approved by the State Human Resources Commission.

Agency Performance Management Policy (cont.)

§ 2. Objectives

In establishing this Performance Management Policy, the State seeks to achieve the following objectives:

- Facilitate effective communication between employees and managers/supervisors;
- Ensure employees have a clear understanding of the performance expected of them and how their individual work contributes to the achievement of the organizational mission;
- Ensure employees provide, as well as receive, input into the development of individual goal and ongoing information about how effectively they are performing relative to established goals;
- Provide employees with ongoing opportunities to receive coaching from their managers/supervisors in areas of development and in areas for improvement;
- Identify and implement opportunities for employee development and discussion of career objectives; and
- Provide policy consistency.

§ 3. Definitions

Agency: A State department, agency, division, office, board, or commission. For the purpose of this policy, agency does not include constituent institutions of The University of North Carolina, for which there is a separate University SHRA Performance Appraisal policy located in Section 10 of the State Human Resources Manual.

Annual Performance Evaluation: The comprehensive review of the employee's performance, relative to the goals and values throughout the entire performance cycle. The annual performance evaluation contains a final overall rating.

Career State Employee: An employee who is in a permanent position who has been continuously employed by the State in a position subject to the State Human Resources Act, for the immediate twelve (12) preceding months.

Calibration Session: A confidential discussion between same-level managers/supervisors, facilitated by the next-level manager/supervisor or a designated Human Resource

Agency Performance Management Policy (cont.)

representative, to evaluate work distribution, goal alignment, goal validity, results, and final ratings.

Coaching: An ongoing process between a manager/supervisor and employee to provide feedback, reinforce desired work actions and values-based behavior, address performance concerns, and/or discuss employee development. Coaching may be either formal (documented electronically or in writing) or informal (not documented).

Documented Counseling Session: A formal documented conversation between a manager/supervisor and an employee to provide specific feedback and initiate a plan to improve the employee's performance and/or values-based behavior to the satisfactory level of performance.

Goals: Organizational, division, work unit, and individual level outcomes which support the strategic mission of the organization. All goals shall be relevant to agency goals/mission. An employee accomplishes a goal by achieving related results aligned with that goal.

Individual Development Plan: A plan used to identify areas of development so an employee (1) shall have the skills, knowledge, and abilities he/she needs to meet the organization's goals and objectives, and (2) is given an opportunity to develop competencies that shall allow him or her to be successful in the future.

Interim Review: A formal documented discussion and documentation of such at the midpoint of the performance cycle between a manager/supervisor and an employee to review the employee's progress and make any necessary adjustments or initiate additional performance-related documentation.

Permanent Employee: An employee who is in a permanent position and has attained career status by being continuously employed by the State in a position subject to the State Human Resources Act for the immediate twelve (12) preceding months.

Performance Cycle: The continuous 12-month period during which the performance management process takes place.

Agency Performance Management Policy (cont.)

Performance Expectation(s): A goal, value, or both, defining outcomes and behaviors that are documented on a performance plan to identify results to be accomplished and how the work should be accomplished.

Performance Management: The written and verbal communication processes for ensuring employees are focusing work efforts in ways that contribute to organizational mission and goals. Performance Management consists of at least three stages:

1. Performance Planning: setting goals and expectations for employee performance,
2. Interim Review (Mid-Cycle Performance Feedback): maintaining a dialogue between manager/supervisor and employee to keep performance on track, and
3. Annual Performance Evaluation: measuring actual performance relative to goals and values.

Performance Plan: A description of the goals and values to be accomplished by the employee within the performance cycle, with emphasis on results to be achieved and how those results shall be measured.

Position Description: A statement or set of duties and responsibilities that represent the major functions of a job which shall be performed to meet the agency's needs.

Probationary Employee: An employee who is in a permanent position but has not attained career status by being continuously employed by the State in a position subject to the State Human Resources Act for the immediate twelve (12) preceding months.

Satisfactory Performance: Work-related performance that meets job requirements as set out in the relevant job description, work plan, or as directed by the management of the work unit or agency.

Time-Limited Employee: An employee who is in a time-limited position and is not eligible for career status.

Values: Qualitative behavioral attributes that document how work actions should be accomplished. Values reflect core organizational beliefs that guide and motivate actions supporting the accomplishment of the agency mission and goals.

Agency Performance Management Policy (cont.)

§ 4. Covered Employees

This policy applies to all permanent, probationary, and time-limited employees. This policy does not apply to temporary employees. This policy applies to all exempt policymaking positions, exempt managerial positions, confidential secretary and confidential assistant positions, and all chief deputy positions.

Employees of constituent institutions of The University of North Carolina should refer to the University SHRA Performance Appraisal Policy located in Section 10 of the State Human Resources Manual.

§ 5. Performance Cycle

The standard State government performance cycle is from July 1 through June 30. The annual performance evaluation shall be completed, approved, discussed with the employee, and entered into the system of record within sixty (60) calendar days of the cycle end date. The State Human Resources Director has the authority to change the dates of the standard performance cycle; however, all covered employees shall be notified a minimum of sixty (60) calendar days prior to the start of the new performance cycle.

§ 6. Documentation of Performance

The Office of State Human Resources shall provide standard Performance Planning, Interim Review, and Annual Performance Evaluation templates to be utilized by all agencies and individuals covered by this policy. Templates for the Individual Development Plan and Documented Counseling Session will also be provided, but their use is not required.

§ 7. Frequency of Performance Reviews

Performance Reviews are required in the following instances:

§ 7.1. Permanent State Employees

The manager/supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of the performance cycle. The manager/supervisor shall conduct an interim review at the midpoint of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the cycle end date. The permanent employee shall have been functioning under an issued performance plan for at

Agency Performance Management Policy (cont.)

least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating.

§ 7.2. Probationary Employees

The manager/supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of employment; however, if the probationary employee's start date is during the last sixty (60) calendar days of the current performance cycle, then the manager/supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of the next performance cycle. The manager/supervisor shall review the probationary employee's performance by conducting documented performance feedback discussions during the first twelve (12) months of employment. A probationary employee is expected to perform the work at the level expected for this position and consistently meet what is expected in terms of quality, quantity, timeliness, cost, and customer satisfaction on all individual goals and individual values. If the employee's performance indicates he or she is not suited for the position and cannot be expected to meet satisfactory performance standards, the employee shall be separated during the probationary period.

The manager/supervisor shall conduct an interim review at the midpoint of the performance cycle and shall conduct a final performance evaluation annually, within sixty (60) calendar days of the cycle end date. If the probationary employee's start date is within sixty (60) calendar days of either the interim review or the annual performance evaluation, then an interim review or annual performance evaluation is not required. The probationary employee shall have been functioning under an issued performance plan for at least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating. To meet the business needs of the work unit, periodic reviews may be conducted as frequently as necessary.

§ 7.3. Time-Limited Employees

The manager/supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of employment; however, if the time-limited employee's start date is during the last sixty (60) calendar days of the current performance cycle, then the manager/supervisor shall establish a performance plan for the employee during the first sixty (60) calendar days of the next performance cycle. The manager/supervisor shall review

Agency Performance Management Policy (cont.)

the time-limited employee's performance by conducting documented performance feedback discussions.

A time-limited employee is expected to perform the work at the level expected for this position and consistently meet what is expected in terms of quality, quantity, timeliness, cost, and customer satisfaction on all individual goals and individual values. If the employee's performance indicates he or she is not suited for the position and cannot be expected to meet satisfactory performance standards, the employee shall be separated.

The manager/supervisor shall conduct an interim review at the midpoint of the performance cycle and shall conduct a final performance evaluation annually, within sixty (60) calendar days of the cycle end date. If the employee's start date is within sixty (60) calendar days of either the interim review or the annual performance evaluation, then an interim review or annual performance evaluation is not required. The time-limited employee must have been functioning under an issued performance plan for at least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating. To meet the business needs of the work unit, periodic reviews may be conducted as frequently as necessary.

§ 7.4. Employees in Trainee Classifications

Employees in trainee classifications will have either a probationary or permanent appointment type. Managers and supervisors shall follow the performance management process based on employee appointment (i.e., probationary or time-limited), as outlined in this policy. See the New Appointments Policy located in Section 4 of the State Human Resources Manual for additional information related to trainee salary progressions.

§ 7.5. Transfers

When an employee transfers (lateral, demotion, reassignment, or promotion) within State government, the existing manager/supervisor shall assess performance and document progress and/or recommended ratings prior to the transfer. If the transfer (lateral, demotion, reassignment, or promotion) occurs during the interim review or annual performance evaluation, then the existing manager/supervisor shall complete the transferring employee's interim review or annual performance evaluation. If the transfer (lateral, demotion, reassignment, or promotion) does not occur during the interim review or annual performance

Agency Performance Management Policy (cont.)

evaluation, then the existing manager/supervisor shall provide written performance information (i.e., documentation in the system of record or email) specific to the employee's achievement of established goals and values to the receiving manager/supervisor. If the transferring employee has been functioning under an issued performance plan for at least six (6) months at the time of the transfer, then the existing manager/supervisor shall recommend performance ratings for goals and values in the system of record, prior to the transfer.

§ 7.6. Change in Manager/Supervisor

When there is a change in manager/supervisor, the existing manager/supervisor shall provide written performance information (i.e., documentation in the system of record, email, etc.) specific to the employee's achievement of established goals and values to the receiving manager/supervisor. If the change in manager/supervisor occurs during the interim review or annual performance evaluation, then the existing manager/supervisor shall complete the interim review or annual performance evaluation. If the employee has been functioning under an issued performance plan for at least six (6) months at the time of the change in manager/supervisor, then the existing manager/supervisor shall recommend performance ratings for goals and values in the system of record prior to the change.

§ 7.7. Separation

When an employee separates from State government, the manager/supervisor shall assess performance and recommend a final overall performance rating, unless the employee's separation is due to a documented disciplinary action, retirement, disability, illness, or death. The separating employee must have been functioning under an issued performance plan for at least six (6) months cumulatively over the performance cycle to be assigned a final overall performance rating. For an employee who is separated for any reason other than documented disciplinary action, retirement, disability, illness, or death, any final overall performance rating that reflects an unsatisfactory level of performance shall be approved by the agency Human Resources Director or his/her designee.

Agency Performance Management Policy (cont.)

§ 8. The Performance Management Process

Throughout the performance cycle, the manager/supervisor shall document and validate, based on direct observation and/or feedback from others, employee performance results and values-based behaviors on a regular and consistent basis. In addition, the manager/supervisor shall provide feedback to the employee, both positive and corrective, when appropriate. Both the manager/supervisor and employee should document activities and accomplishments related to goals and values-based behaviors during the performance cycle. All formal coaching and counseling sessions and formal performance discussions shall be documented electronically or in writing.

§ 9. Formal Performance Discussions

Managers/Supervisors shall conduct a minimum of three (3) formal performance discussions annually, with each employee and timed accordingly:

1. Beginning of the Performance Cycle: Stage One: Performance Planning
2. Midpoint of the Performance Cycle: Stage Two: Interim Review
3. End of the Performance Cycle: Stage Three: Annual Performance Evaluation.

§ 10. Stages of the Performance Management Process

§ 10.1. Stage One: Performance Planning

Each employee shall have an annual performance plan to include at least three (3) but not more than five (5) strategically aligned critical individual goals (not an exhaustive list of all responsibilities required for continued employment and does not duplicate information in the position description) and criteria to be used to measure work performed. Goals shall be written at the satisfactory level for the position. The agency shall facilitate calibration discussions to systematically assess goal validity and ensure organizational consistency.

Within ninety (90) calendar days of the onset of a performance management cycle, the Office of State Human Resources shall communicate the process for assigning any statewide values to employees subject to this policy. Each agency may choose to add up to five (5) additional organizational values, selected from a predefined list published and communicated by OSHR within ninety (90) calendar days of the onset of the performance management cycle.

Agency Performance Management Policy (cont.)

The weighting structure of goals and values shall be determined by the Office of State Human Resources and will normally be communicated to agencies within ninety (90) calendar days of the beginning of the performance management cycle.

Managers/Supervisors shall hold a performance planning discussion with each employee and put a performance plan in place with each employee within sixty (60) calendar days of:

- the beginning of the performance management cycle;
- the employee's entry into a position;
- a new (probationary or time-limited) employee's date of employment, unless the start date of employment is within sixty (60) calendar days of the end of the current performance cycle; or
- any significant change to the performance expectations of the current performance plan.

Once signed by the appropriate levels of management, the employee shall review, sign, and date the performance plan. The employee's signature on the performance plan acknowledges his/her receipt of the plan. If the employee refuses to sign the performance plan, the manager/supervisor shall document the employee's refusal on the performance plan.

Each employee shall have ready access to his/her performance plan either via paper or electronically.

§ 10.2. Stage Two: Interim Review (Mid-Cycle Performance Feedback)

The Interim Review provides managers/supervisors and employees with an opportunity to discuss, at the midpoint of the cycle, any changes in organizational priorities or employee development goals, review progress toward meeting strategically aligned individual goals and, if necessary, revise performance plans, initiate individual development plans, or address performance problems and identify steps the employee should take to improve or adjust priorities through the remainder of the performance cycle. Additional formal and informal discussions shall also be conducted as needed throughout the performance cycle.

Agency Performance Management Policy (cont.)

§ 10.3. Stage Three: Annual Performance Evaluation

At the end of the performance cycle, the manager/supervisor shall evaluate employee overall/cumulative performance relative to the three (3) to five (5) individual goals as well as the established organizational values for each position held during the performance cycle.

Managers/Supervisors shall use quantitative and qualitative information collected throughout the cycle and documented by various sources, including information documented by the employee, to determine the extent to which the employee's actual performance has met the expectations defined in the performance plan. The manager/supervisor shall evaluate performance based on the performance information and assign ratings to each goal and value to determine an overall annual performance evaluation rating. Agency Human Resources personnel shall facilitate calibration discussions to systematically assess rating validity and ensure organizational consistency.

Each individual goal and value shall be rated using the standardized three-point rating scale as determined by the Office of State Human Resources. The standardized scale will normally be communicated to agencies within ninety (90) calendar days of the beginning of the performance management cycle.

The employee's final annual performance evaluation rating shall be based on results achieved cumulatively over the performance cycle relative to his/her individual goals and organizational values. The final annual performance evaluation rating shall reflect timeliness, quantity, and quality of job performance relative to established goals and identified values. A final annual performance evaluation rating that is higher or lower than what is expected of someone in the position shall be supported by appropriate documentation. An employee who performs below the satisfactory level of performance on any goal or value shall not be awarded a final annual performance evaluation rating above the satisfactory level of performance, regardless of the level of results achieved or adherence to values.

Managers/Supervisors shall assign a final annual performance evaluation rating and conduct an annual performance evaluation meeting with each employee. Managers/Supervisors shall not submit final annual performance evaluation ratings for employees unless an annual performance plan, supported by ongoing performance documentation, has been completed in accordance with this policy

Agency Performance Management Policy (cont.)

- Once signed by the appropriate levels of management, the employee shall review, sign, and date the annual performance evaluation. The employee's signature on the annual performance evaluation acknowledges his/her receipt of the evaluation. If the employee refuses to sign the annual performance evaluation, the manager/supervisor shall document the employee's refusal on the performance evaluation.
- Each employee shall have ready access to his/her annual performance evaluation either via paper or electronically.

§ 11. Addressing Unsatisfactory Job Performance

If at any time during the performance cycle an employee is not performing at the satisfactory level for the position, the manager/supervisor will consider the totality of the circumstances in determining at what step to begin the performance discussion. For the majority of performance discussions, the manager/supervisor shall provide feedback to the employee regarding the need for him/her to improve his/her performance. If performance does not improve following the feedback provided by the manager/supervisor, for the majority of performance discussions, the manager/supervisor shall:

1. Consult his/her Human Resource representative regarding the steps necessary for conducting a Documented Counseling Session (DCS).
2. Conduct a Documented Counseling Session (DCS) to:
   - discuss ways to improve the employee's performance and/or values-based behavior,
   - seek input from the employee about whether the performance issue can be corrected through a process change or to determine if the employee needs to receive additional training on current procedures/processes,
   - outline the steps to be taken to improve performance, including the specific timeframe for improvement,
   - identify the consequences, including progressive disciplinary action, of failure to improve, and
   - establish a follow-up date(s).

   For some values-based behaviors and performance concerns, immediate improvement may be necessary (e.g., safety concerns, etc.).

Agency Performance Management Policy (cont.)

If performance improves to the satisfactory level during the established timeframe and performance is maintained at the satisfactory level, then the manager/supervisor should document the employee's performance improvement electronically or in writing.

3. If employee performance and/or values-based behavior does not improve to the satisfactory level during the designated timeframe discussed during the DCS and/or employee performance and/or values-based behavior improves to the satisfactory level but is not maintained at that level, then the manager/supervisor shall consult his/her Human Resources representative and the Disciplinary Action Policy found in Section 7 of the State Human Resources Manual.

   A DCS shall be conducted prior to beginning disciplinary actions for performance issues. Any disciplinary action issued for unsatisfactory job performance without a prior DCS must first be approved by the agency Human Resources Director or his/her designee. Performance deficiencies occurring during the performance cycle, which result in a Documented Counseling Session or disciplinary action, shall be referenced in the performance record. Consult the Disciplinary Action Policy found in Section 7 of the State Human Resources Manual for information about actions that inactivate disciplinary actions for unsatisfactory job performance.

§ 12. Performance Management Resources and Training

Each agency shall:

- Designate a person as its performance management coordinator, with responsibility for coordinating the development, implementation, and ongoing administration of performance management within the organization.
- Provide performance management training, made available by OSHR and/or the agency, to all newly hired or promoted managers/supervisors, to be successfully completed within the first three (3) months of the manager's/supervisor's new role;
- Provide annual refresher training, made available by OSHR and/or the agency, to all employees.

§ 13. Confidentiality, Right to Inspect, and Records Retention

Performance evaluations are confidential documents under N.C.G.S. § 126-22; however, calibration sessions may require the disclosure of performance evaluations on a

Agency Performance Management Policy (cont.)

need-to-know basis among supervisors and managers. To promote communication and coordination, agency management may make some version of performance plans and evaluations visible internally. Any confidential information discussed during calibration sessions shall not be shared outside of the calibration session. A breach of confidentiality shall be considered Unacceptable Personal Conduct and may result in disciplinary action up to and including dismissal.

Additionally, under N.C.G.S. § 126-24, hiring supervisors and managers shall be able to inspect and examine performance management documents of final job candidates who are current or former State employees during the hiring process.

Annual performance evaluations and supporting documentation shall be securely retained for at least three (3) years, and then maintained according to the applicable records retention schedule.

§ 14. Policy Compliance

The Office of State Human Resources shall monitor and evaluate performance management records and data to ensure agency compliance.

If an employee believes his/her manager/supervisor is failing to adhere to the performance management processes, the employee should notify the next-level manager/supervisor or the agency's Human Resources office. The failure of a manager/supervisor to carry out the performance management process in accordance with this policy shall be addressed as a performance deficiency and shall result in one or more of the following:

- Documented Counseling Session from the next-level manager/supervisor to determine the cause(s) of the deficiency and implementation of a plan to improve performance;
- Participation in skills enhancement training;
- Monitoring and documentation of manager/supervisor progress towards improving in the performance of assigned performance management duties; and/or
- Issuing appropriate disciplinary actions.

Agency Performance Management Policy (cont.)

§ 15. Performance Rating Dispute

Career State employees or former career State employees may grieve an overall performance rating of less than "meets expectations" using the North Carolina Employee Grievance Policy found in Section 7 of the State Human Resources Manual.

§ 16. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

It is compliant with the Administrative Code rules at:

- 25 NCAC 01O .0107, .01200

§ 17. History of This Policy

Date	Version
July 1, 1950	• Procedure for payment of Increments established. Each department limited to 3% of payroll. Policy adopted that not more than 2/3 of the employees who are at or above the middle of their salary range and who are otherwise eligible would be given merit increases. Employees must have at least a standard rating in order to receive an increment.
July 1, 1980	• Merit Increase revised to Performance Salary Increase. Full funding available for those below the third step. Employee receives a one step increase based on work performance. Funds limited for Step 4 through 7, forcing an evaluation of employer's performance relative to the performance of other employees. Eligibility allowed for a one-step increase (may be granted in ½ steps.) Employees eligible yearly until they reach the maximum of their salary range.
January 1, 1990	• New Performance Management Policy.
July 1, 1990	• Added legislative provision regarding establishment of committees to oversee agency's system.

Agency Performance Management Policy (cont.)

July 1, 1991	• Performance salary increase – changed effective date for performance increases from quarterly to monthly with the exception of July. • NC Rating scale added.
September 1, 2007	Revised Performance Management Policy. Highlights of the revised policy are: 1. This policy replaces the existing policy. However, agencies are not required to revise their policies. They may continue using their current performance management processes that were approved under the old policy. 2. Agencies have considerable latitude to determine how supervisors "do" performance management. It does not specify the detailed elements of work plans and appraisals. Agencies are encouraged to design processes to fit the work being managed. 3. Supervisors are not required to conduct interim reviews at midyear. Agencies may develop their own methods for stimulating ongoing performance dialogue. 4. Agencies may use an overall rating scale other than the fivepoint "state" rating scale, so long as their employees' overall performance ratings can be converted to a five-point scale to comply with GS 126. 5. Supervisors are to review their employees' appraisals with their managers before discussing the appraisals with their employees. 6. Agencies are to specify how documentation of an employee's poor performance ties in to their discipline policy. 7. Agencies are to set their own time requirements for probationary employees' work plans to be in place and for other timelines related to performance management. 8. Agencies are to specify what, in addition to a completed appraisal, is confidential. They are encouraged to not make work plans and performance tracking information confidential.

Agency Performance Management Policy (cont.)

	9. Agencies may access employees' past performance appraisals to more properly inform promotion or hiring decisions. 10. Agencies may access employees' past performance appraisals to more properly inform promotion or hiring decisions.
December 1, 2013	• Section on "Performance Rating and Pay Disputes" changed to refer employees to the Employee Grievance Policy found in Section 7 of the HR Manual.
July 15 2020	• Title change from Performance Management System to University Performance Management System. • Reference to agencies was changed to universities. This was previously a statewide policy for both agencies and universities but with the July 1 implementation of the new performance management program for State agencies, this policy now only applies to university employees. This policy will remain in effect until April 1, 2016 when the new performance management program for the universities is implemented.
October 1, 2020	• The proposed changes to this policy are primarily to improve clarity and readability of the policy itself. There are also some technical corrections to improve alignment with the NC Employment Grievance Policy and the Appointment Types and Career Status Policy. No procedural changes are included in the proposed revisions. • Summary of Change Proposed: • Removal of references to Trainee Classification and Trainee Salary Progression. • Clarification of standardized three-point rating scale language. • Clarification of performance rating dispute resolution. • Multiple formatting revisions for readability and ease of use.

AGENCY PERFORMANCE MANAGEMENT POLICY
SUMMARY OF REVISIONS

10-1-2020

- The proposed changes to this policy are primarily to clarity some definitions and terms. There are also some language revisions to improve alignment with the Agency Appointment Types and Career Status Policy.
  - Clarification of definitions and terms
  - Change name of UNC GA to UNC System Office
  - Language revision related to UNC System Office responsibilities to constituent institutions

7-15-2020

- Title change from Performance Management System to University Performance Management System.
- Reference to agencies was changed to universities. This was previously a statewide policy for both agencies and universities but with the July 1 implementation of the new performance management program for State agencies, this policy now only applies to university employees. This policy will remain in effect until April 1, 2016 when the new performance management program for the universities is implemented.

12-1-2013

- Section on “Performance Rating and Pay Disputes” changed to refer employees to the Employee Grievance Policy found in Section 7 of the HR Manual.

9-01-2007

Revised Performance Management Policy. Highlights of the revised policy are:

1. This policy replaces the existing policy. However, agencies are not required to revise their policies. They may continue using their current performance management processes that were approved under the old policy.

2. Agencies have considerable latitude to determine how supervisors “do” performance management. It does not specify the detailed elements of work plans and appraisals. Agencies are encouraged to design processes to fit the work being managed.
3. Supervisors are not required to conduct interim reviews at midyear. Agencies may develop their own methods for stimulating ongoing performance dialogue.
4. Agencies may use an overall rating scale other than the fivepoint “state” rating scale, so long as their employees’ overall performance ratings can be converted to a five-point scale to comply with GS 126.
5. Supervisors are to review their employees’ appraisals with their managers before discussing the appraisals with their employees.
6. Agencies are to specify how documentation of an employee’s poor performance ties in to their discipline policy.
7. Agencies are to set their own time requirements for probationary employees’ work plans to be in place and for other timelines related to performance management.
8. Agencies are to specify what, in addition to a completed appraisal, is confidential. They are encouraged to not make work plans and performance tracking information confidential.
9. Agencies may access employees’ past performance appraisals to more properly inform promotion or hiring decisions.
10. Agencies may access employees’ past performance appraisals to more properly inform promotion or hiring decisions.

7-1-1991

- Performance salary increase – changed effective date for performance increases from quarterly to monthly with the exception of July.
- NC Rating scale added.

7-1-1990

- Added legislative provision regarding establishment of committees to oversee agency’s system.

1-1-1990

- New Performance Management Policy.

7-1-1980

- Merit Increase revised to Performance Salary Increase. Full funding available for those below the third step. Employee receives a one Step increase based on work performance. Funds limited for Step 4 through 7, forcing an evaluation of employer's performance relative to the performance of other employees. Eligibility allowed for a one-step increase (may be granted in ½ steps.) Employees eligible yearly until they reach the maximum of their salary range.

7-1-1950

- Procedure for payment of Increments established. Each department limited to 3% of payroll. Policy adopted that not more than 2/3 of the employees who are at or above the middle of their salary range and who are otherwise eligible would be given merit increases. Employees must have at least a standard rating in order to receive an increment.

I. POLICY

It is the policy of The University of North Carolina (the "University") to provide an annual performance appraisal system that (1) identifies performance goals necessary to achieve the University's mission; and (2) evaluates covered employees' accomplishments toward these goals. Each constituent institution shall implement this University SHRA Performance Appraisal Policy.

II. OBJECTIVES

In establishing this University SHRA Performance Appraisal Policy, The University of North Carolina seeks to achieve the following objectives:

A. Facilitate effective communication between employees and managers/supervisors;
B. Ensure employees have a clear understanding of the performance and behaviors expected of them;
C. Ensure employees have a clear understanding of how their individual work contributes to achieving the mission of their work unit and institution;
D. Ensure employees provide, as well as receive, input into the development of performance goals and ongoing information about how effectively they are performing relative to established goals; and
E. Identify and implement opportunities for employee development and discussion of career objectives.

III. DEFINITIONS

The following definitions of terms are used in this policy:

Term	Definition
Annual Performance Appraisal Document	An annually updated document that outlines an employee's performance goals at the "meeting expectations" level, which includes results to be achieved and how those results will be measured. Off-cycle reviews and annual performance appraisals are documented on this form, or its electronic equivalent. In addition, it may include a career/talent development plan based on the needs of the employee, work unit, or constituent institution.

Term	Definition
Calibration	A communication process in which peer managers/supervisors within a defined organizational unit establish goals and metrics to ensure consistent application of performance expectations and ratings across similar positions.
Career State Employee	An SHRA employee who has been continuously employed by the State for at least the immediate 12* preceding months in a permanent position with a permanent appointment subject to the NC Human Resources Act. Some organizations refer to this as "career status".
Coaching	A discussion between a manager/supervisor and employee to provide informal clarification of expectations to resolve potential performance or behavioral issues.
Individual Goals	Key performance expectations assigned annually to each employee by their manager/supervisor that are aligned with the mission and strategic goals of the work unit and/or constituent institution.
Institutional Goals	Standing performance and behavioral expectations that apply to all SHRA employees in the UNC System.
Probationary Employee	An SHRA employee in a permanent position subject to the NC Human Resources Act who has not attained career status by being continuously employed by the State in a permanent position for the immediate 12* preceding months.
SHRA Employee	An individual in a position subject to the NC Human Resources Act.
Time-Limited Employee	An SHRA employee who is in a time-limited position and therefore not eligible for career status.

** Employees in law enforcement positions who are hired without their Basic Law Enforcement Training are subject to a 24-month probationary period.*

IV. COVERED EMPLOYEES

This policy applies to all SHRA probationary, time-limited and permanent, and career state employees. This policy does not apply to temporary employees.

V. GENERAL PROVISIONS

A. **Performance Appraisal Cycle:** The standard University annual performance appraisal cycle is April 1 to March 31. The annual performance appraisal shall be completed, approved, discussed with the employee, and entered into the constituent institution's system of record within 60 calendar days following the end of the cycle (by May 30). The UNC System Senior Vice President for Human Resources, with approval from the Director of the Office of State Human Resources, may change the dates of the standard performance appraisal cycle; however, all employees shall be notified of any such change a minimum of 60 calendar days prior to the start of the new performance appraisal cycle.

B. **Documentation Requirements:** The UNC System Office shall provide a template for the annual performance appraisal document. The template document, or its electronic equivalent, will be utilized by all constituent institutions and employees covered by this policy. The UNC System Office shall publish and communicate this template a minimum of 60 calendar days prior to the start of the performance appraisal cycle.

C. **Communication Requirements**: Managers/supervisors shall conduct a minimum of three types of performance discussions annually with employees: (1) *Performance Planning*, to discuss the goals for the cycle; (2) *Performance Feedback*, to provide guidance and clarity of expectations throughout the cycle; and (3) *Performance Appraisal*, to complete an annual performance appraisal document and assign the employee a final overall rating for the cycle.

VI. PERFORMANCE PLANNING

The purpose of performance planning is to provide an annual opportunity for the employee and manager/supervisor to discuss the assigned responsibilities and ensure the employee understands their new or recurring goals, expectations, and measures. Individual components of the process include:

A. **Performance Planning Discussion:** The manager/supervisor shall hold a performance planning discussion individually with each employee and put a performance plan in place within 60 calendar days after:

1. The beginning of the annual performance appraisal cycle;
2. A significant change in position or duties, or a change in a manager/supervisor; or
3. A new (probationary or time-limited) employee's date of employment.

B. **Goal Calibration:** Prior to holding performance planning discussions with their employees, peer managers/supervisors within the defined organizational unit should meet to ensure consistent application of goals and measurements across similar positions.

C. **Individual Goals:** Each performance cycle, the manager/supervisor shall define three to five individual goals for each employee. These goals may be specific to an individual, a work unit, or a classification group and should support the organizational unit's mission, strategic goals, and priorities. Each goal shall be written at the "meeting expectations" level of performance and shall be specific, measurable, achievable, relevant, and timely.

D. **Institutional Goals:** The UNC System Office provides a set of performance expectations, approved by the President, or their designee, that address critical aspects of every employee's overall work product. The UNC System Office will provide managers/supervisors with definitions of these goals at the "meeting expectations" level of performance.

E. **Weighting Goals:** The individual goals comprise 50% of the final overall rating, and the institutional goals comprise 50% of the final overall rating. Managers/supervisors can determine the weight of each goal, but no single goal shall be weighted less than 5% of the final overall rating.

F. **Career/Talent Development Plan:** When there is a business need for an employee's professional development, the manager/supervisor will include a career/talent development plan in the annual performance appraisal document.

G. **Review and Signature:** Once reviewed and signed by the manager/supervisor and next-level manager/supervisor, the employee shall review, sign and date the annual performance appraisal document. The employee's signature confirms only that the employee has received the document. However, if an employee refuses to sign, then the manager/supervisor shall note the employee's refusal on the document. Electronic signatures are acceptable.

NOTE: *Until a new annual performance appraisal document is in place, employees shall function under the goals established in their most recent annual performance appraisal document, to the extent they are applicable.*

VII. PERFORMANCE FEEDBACK

A. **Off-cycle Reviews:** Managers/supervisors shall meet with each employee periodically to review goals, assess progress, and, as applicable, clarify or redefine expectations for the remainder of the cycle. Additionally, there are specific events that will require an off-cycle review session to be performed:

1. **Interim Reviews:** An interim performance review shall be completed at the midpoint of the performance appraisal cycle: (a) for all employees who received any rating of "Not Meeting Expectations" on their last annual performance appraisal; (b) for all employees who have active disciplinary actions; (c) for other employees, when the manager/supervisor finds it appropriate or necessary to perform an interim review; or (d) if the Chancellor (or President, for the UNC System Office) decides to require interim reviews campus-wide.

2. **Probationary and Time-Limited Employee Reviews:** For new employees (probationary and time-limited), the manager/supervisor shall provide periodic performance feedback to the employee during the first 12 months of employment.

3. **Transfer Reviews:** When an employee transfers (lateral, demotion, reassignment, reclassification, or promotion) within State government, or when there is a change in manager/supervisor, the releasing manager/supervisor shall provide a transfer performance review to the receiving manager/supervisor at the time of the transfer. If the transfer occurs within 60 calendar days of a completed annual performance appraisal or off-cycle review, then the annual or an off-cycle evaluation may be used instead.

4. **Employee Requested Reviews:** Employees may request one additional off-cycle review per performance cycle. When an employee requests this off-cycle review, the manager/supervisor must provide one if more than 60 calendar days have passed since the employee's last annual or off-cycle review. Managers/supervisors are otherwise expected to respond to reasonable employee requests for coaching and other direct feedback.

5. **Other Off-cycle Performance Reviews:** To meet the business needs of the work unit, managers/ supervisors may conduct additional off-cycle performance reviews as frequently as necessary.

B. **Continuous Feedback and Coaching:** Communication shall occur throughout the cycle on employee progress toward meeting goals. If the manager/supervisor provides appropriate progressive coaching and the employee's performance/behavior does not improve, the manager/supervisor shall consult their Human Resources representative prior to addressing performance or conduct deficiencies in accordance with the SHRA Disciplinary Policy.

VIII. PERFORMANCE APPRAISAL

The purpose of the annual performance appraisal at the end of the cycle is to provide an opportunity for the manager/supervisor to meet with each employee to review performance results and assign a final overall rating for the cycle. Managers/supervisors shall not submit final overall ratings for employees until an annual performance appraisal, supported by ongoing performance documentation, has been completed in compliance with this policy.

A. **Minimum Evaluation Requirements:** In order to receive an annual performance appraisal and final overall rating, an employee: (1) must be active as of March 31 in a position subject to this policy; and (2) must have worked under one or more annual performance appraisal documents for at least six months of the performance appraisal cycle. Appraisals must be completed within the 60 calendar days following the end of the performance cycle.

B. **Transfers or Changes in Manager/Supervisor:** The receiving manager/supervisor shall complete the employee's annual performance appraisal at the end of the cycle and incorporate the transfer review information received from the releasing supervisor, as warranted. However, if an employee transfer or change in manager/supervisor occurs within the last 60 calendar days of the performance cycle, then the releasing/ending manager/supervisor shall complete the annual performance appraisal for the employee and forward to the receiving manager/supervisor.

C. **Probationary or Time-limited Employees:** If the performance appraisal document has not been established by October 1 for a probationary or time-limited employee during the employee's first performance appraisal cycle, then the employee shall have an extended performance cycle and shall receive a first annual performance appraisal at the end of the next cycle.

D. **Separations:** If an employee separates from State employment prior to the end of the performance appraisal cycle (March 31), then an annual performance appraisal shall not occur, but the supervisor may choose to complete an off-cycle performance review at the time of the separation.

IX. PERFORMANCE RATINGS

A. **Ratings Calibration**: Prior to final ratings being shared with employees, peer managers/supervisors within the defined organizational unit shall meet to ensure consistent application of final ratings across similar positions.

B. **Rating Scale:** The performance appraisal process shall employ a standard rating scale for all goals. The rating scale sets three levels of performance: Not Meeting Expectations, Meeting Expectations, and Exceeding Expectations.

C. **Rating Scale for Individual Goals**: Each goal shall be rated using the standardized 3-point scale below. Ratings shall be consistent with the expectation levels established in the performance plan.

NOT MEETING EXPECTATIONS	MEETING EXPECTATIONS	EXCEEDING EXPECTATIONS
Employee often performs below the level defined in the performance plan in terms of quantity, quality, timeliness, cost, and customer satisfaction due to the employee's lack of effort or skills.	Employee generally performs at the level defined in the performance plan in terms of quantity, quality, timeliness, cost, and customer satisfaction due to the employee's own effort and skills.	Employee consistently exceeds the level defined in the performance plan in terms of quantity, quality, timeliness, cost, and customer satisfaction due to the employee's own effort and skills.
Employee has a performance deficiencies that have not improved after receiving corrective feedback by the manager/supervisor, and/or increased oversight is required to ensure work is being accomplished.	Employee is responsive to guidance and feedback from the supervisor such that only moderate oversight is required to ensure sufficient work is being accomplished.	Employee's work performance is consistently characterized by exceptionally high quality work accomplished with minimal oversight.

D. **Rating Scale for Institutional Goals**: Each goal shall be rated using the standardized scale provided by the UNC System Office for institutional goals.

E. **Impact of Performance Deficiencies on Final Overall Rating**:

1. An employee who receives any rating of "Not Meeting Expectations" shall not receive a final overall rating of "Exceeding Expectations," regardless of the results achieved on other goals.

2. If an employee has an active disciplinary action that was issued during this performance appraisal cycle, then the employee shall receive a "Not Meeting Expectations" rating for the goal (s) cited in the action and shall not receive a final overall rating of "Exceeding Expectations," regardless of the results achieved on other goals. The disciplinary action shall be referenced in the annual performance appraisal document.

Note: *If the employee receives both a rating of "Meeting Expectations" for the goal(s) cited in an active disciplinary action and receives a rating of "Meeting Expectations" on the final overall rating, then the disciplinary action shall become inactive.*

F. **Review and Signature**: Once reviewed and signed by the manager/supervisor and next-level manager/supervisor, the employee shall review, sign and date the annual performance appraisal document. The employee's signature confirms only that the employee has received the document. However, if an employee refuses to sign, then the manager/supervisor shall note the employee's refusal on the document. Electronic signatures are acceptable.

G. **Recording Ratings**: For all employees active as of March 31, the annual performance appraisal shall be completed, approved, discussed with the employee, and entered into the constituent institution's system of record by May 30. Final overall ratings entered into the system of record must include, but are not limited to, the following categories:

3 – Exceeding Expectations
2 – Meeting Expectations
1 – Not Meeting Expectations
T – Insufficient Time to Evaluate (active less than six months during cycle)
L – Unavailable to Evaluate (due to extended paid or unpaid leave)

H. **Addressing Supervisory Non-compliance:** If a manager/supervisor fails to complete the appraisal process and/or to submit a final overall rating as required by this policy, then the next-level manager/supervisor shall ensure that appropriate ratings are assigned in a timely manner. The manager/supervisor's failure to execute their performance management requirements through this policy shall be addressed in their annual appraisal and, as necessary, through application of the SHRA Disciplinary Policy or other applicable corrective process for SHRA or EHRA managers/supervisors.

X. POLICY RESPONSIBILITIES

A. UNC System Office Responsibilities

1. The Office of State Human Resources (OSHR) delegates to the University of North Carolina System Office responsibility and accountability for the following:

a. **Implement Policy:** The UNC System Office will develop and execute a comprehensive implementation strategy in conjunction with OSHR that ensures compliance with the policy.

b. **Set Institutional Goals:** The UNC System Office shall publish and communicate a set of institutional goals at least 60 calendar days prior to the onset of the performance appraisal cycle. These goals will be consistent with and representative of the OSHR statewide organizational values.

c. **Provide Resources:** The UNC System Office shall develop and implement: (1) training materials and document templates for use throughout the UNC system and (2) an effective calibration process that each constituent institution should use to facilitate calibration discussions to assess goal validity and ensure organizational consistency in ratings.

d. **Monitor Compliance:** The UNC System Office shall develop an internal process to ensure: (1) that campus institutions are compliant with the established performance appraisal policy and (2) that institutional or managerial non-compliance with the performance appraisal process is addressed appropriately and consistently.

e. **Conduct Analysis:** The UNC System Office shall establish and conduct on-going analyses of performance data to evaluate policy effectiveness and communicate results to improve the program effectiveness.

f. **Submit Ratings & Related Data:** The UNC System Office shall provide final overall ratings from each constituent institution to the Office of State Human Resources by June 30 of each year or as otherwise requested by OSHR and provide in a timely manner relevant and useful performance-related reports and data to OSHR as requested.

2. **UNC Constituent Institution Responsibilities:**

a. **Performance Appraisal System Coordinator:** Each constituent institution shall designate a Performance Appraisal System Coordinator with responsibility for coordinating the development, implementation and ongoing administration of the performance appraisal process for employees at the constituent institution.

b. **Performance Appraisal Training:** Each constituent institution shall provide performance appraisal training to all newly assigned, hired, or promoted managers/supervisors, to be successfully completed within the first three months of the manager/supervisor's entry into the role. Each constituent institution also shall provide annual refresher training to all employees. The UNC System Office may make available performance management training and resources to the constituent institutions.

c. **Managerial Non-compliance:** Each constituent institution shall appropriately address managerial non-compliance with the annual performance appraisal policy.

B. Office of State Human Resources Responsibilities

1. **Monitor:** OSHR will monitor and evaluate performance appraisal records and related data to ensure University compliance.

2. **Audit:** OSHR may audit university performance appraisal policies, practices, and processes to ensure that SHRA employees working throughout the constituent institutions of the UNC System have a functional and compliant performance appraisal system.

XI. CONFIDENTIALITY AND RECORDS RETENTION

A. **Employee Access:** Each employee shall have ready access to their annual performance appraisal, either on paper or electronically.

B. **Confidentiality:** Performance management documents are confidential documents under G.S. 126-22. However:

1. Calibration discussions may require the disclosure of employee-specific performance information on a need-to-know basis among supervisors and managers. Any information shared during calibration discussions shall be treated as confidential and shall not be shared outside of the calibration session. A breach of confidentiality shall be considered unacceptable personal conduct and may result in disciplinary action, up to and including dismissal.

2. To promote communication and coordination, management at constituent institutions may make some version of performance plans visible internally.

3. Under G.S. 126-24, hiring supervisors and managers may inspect and examine during the hiring process the performance management documents of final job candidates who are current or former State employees.

C. **Retention Schedule:** Annual performance appraisals and supporting documentation shall be securely retained for at least three years, and then maintained according to the applicable records retention schedule.

XII. APPEAL RIGHTS

Career State employees or former Career State employees may grieve an overall performance rating of "Not Meeting Expectations" using the internal employee grievance process. For more information, please refer to the University SHRA Employee Grievance Policy.

XIII. EFFECTIVE DATE

This policy is effective October 1, 2020. This policy has been approved by the State Human Resources Commission, and any exception to this policy shall receive written approval from the Director of the Office of State Human Resources.

Position Management Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina to deliver its programs of service and achieve its objectives through sound management practice. A basic part of this practice is effective fiscally responsible position management.

Position management involves the design and administration of individual positions to achieve a proper balance of values among the following management considerations:

- number of positions;
- total cost of service;
- maximum use of scarce or costly manpower skills;
- maximum attraction, retention, and motivation of competent personnel;
- provision for maximum development opportunities;
- effective use of work processes, equipment, and techniques; and
- clear delineation of duties and responsibilities.

Good position management reflects the composite resolution of these often-conflicting values. It is a continuous and systematic process for determining the number of positions needed, the skill and knowledge requirements of those positions, and the organizational grouping of positions to carry out the work of the organizational unit to which they are assigned.

Position Management Policy (cont.)

Position management is inherently the responsibility of managers and supervisors. Staff assistance in this area is available to management from the Office of State Human Resources.

§ 2. Position Design

Position design is the structuring of work assignments to achieve organizational goals with the best use of human resources most readily available and by avoiding unnecessary competition for labor in short supply. Each agency and each program of service in State government is in competition for scarce financial and human resources. These represent actual and imposed controls or limitations. Position design has as its goal the improved management of positions within the limitations of available resources. Line managers have many factors to consider in designing positions. These include labor market resources, equipment or work process alternatives, pay competition, competing demands for funds and space, overall goal or program priorities, training possibilities, and many others. To assist management with data collection and analysis of the many considerations, staff assistance, both from within the agency and resources of other staff agencies, should be used.

Position design is accomplished by systematically following several guides which are keys to developing facts necessary to good position management:

- Analyzing the mission and objectives of the organizational unit,
- Determining the tasks to be performed in accomplishing objectives,
- Determining the most efficient methods, work processes, equipment, and techniques for performing identified tasks,
- Designing positions by grouping tasks together on the basis of the most effective use of available people skills, and
- Continuously reviewing assignments and restructuring work of positions, including vacancies, to ensure efficiency and resource stewardship on a current basis.

§ 3. Position Analysis

In the successful accomplishment of position management, there is a need to define the nature of positions, relative to the mission and dynamics of the organization. Position analysis is the process of describing and evaluating the different kinds and levels of work

Position Management Policy (cont.)

found in the organization and grouping positions with similar kinds of work on the basis of major factors which includes but is not limited to minimum education/experience requirements, decision-making responsibility, as well as variety, complexity and scope of work. Position analysis involves the application of accepted techniques of job evaluation to produce a systematic classification plan that forms the basis for an equitable and logical pay plan, meaningful standards of recruitment and selection, identification of training needs, a framework for performance evaluation, and information to support management in planning, budgeting, and maintaining the organization.

Agency HR Directors with delegated classification authority must ensure positions are properly classified and align with the classification spec, using established OSHR standards and procedures. This includes maintaining the required classification documentation such as an explanation of the basis for the classification, updated position description, organizational profile, and detailed analyst notes.

Basic to an understanding of position analysis are the concepts of a position and job class.

Job Family: A group of jobs involving work of a similar nature but requiring different knowledge, skill and responsibility levels.

Branch: Within a job family, jobs are grouped together into specialized sub-set categories called branches.

Job: Work consisting of responsibilities and duties that are sufficiently alike to justify being covered by a single Class Spec. More than one employee may be assigned to a job (i.e., the job of administrative assistant II is held by more than one person, but these individuals are in the same job because they all perform similar duties and responsibilities). A job refers to the combination of duties and responsibilities that are carried out by all persons in that classification.

Position: Used to denote the unique responsibilities and duties assigned to one employee. In instances when there is only one person with a certain job title or job description, the position is the same as a job classification. If, however, there are multiple individuals with the same job title/job description, then each individual with that job title has his or her own position. In other words, a position represents a specific person and the unique duties and responsibilities that person performs.

Position Management Policy (cont.)

§ 4. Classification Plan

The State Human Resources Commission, subject to the approval of the Governor, establishes policies and rules governing a position classification plan which shall provide for the classification and reclassification of all positions subject to Chapter 126 of the North Carolina General Statutes.

The State Human Resources Director is authorized to allocate and reallocate individual positions consistent with the established classification and pay plan.

The classification plan for the State of North Carolina consists of all classes established by the State Human Resources Commission for positions subject to the State Human Resources Act, together with procedures for maintaining the plan and standards for each class. In grouping positions into classes, they are first grouped by the type of work, for example, administrative, trades, accounting, or nursing. Second, the duties and responsibilities are evaluated or weighted to determine their relative level. This evaluation process involves the examination of the relative presence and degree of common factors which include but is not limited to minimum education/experience requirements, decision-making responsibility, as well as variety, complexity and scope of work.

§ 5. Class Specification

Classification Specification (class spec): This is a broad summary of the essential duties and responsibilities of a job. It is not intended to describe all the duties of each position in the class but rather to give a composite view of the class so as to set it apart from other classes. A class spec identifies the nature of the work performed, minimum education and experience required to perform the essential duties and responsibilities, and the knowledge, skills and abilities required. OSHR creates class specs in collaboration with agency HR staff and presents to the State Human Resources Commission as the approving authority for all class specs. Class Specs are used by agency HR analysts and OSHR for the job evaluation process.

Class Title: The class title is the official title to be used for payroll, position management and other human resources and budget records. It may cover positions in several agencies and does not preclude the use of more specific working titles, if individual agencies so desire. In a series where Roman numerals are used to indicate more than one level of work, the numeral “I” always denotes the lowest level.

Position Management Policy (cont.)

Description of Work: This section describes by a general statement and then by more detailed statements the type of work and responsibilities which characterize the class. A consideration of such factors as scope, variety and complexity of work, relative independence of action, supervision received and exercised, and other distinguishing features are also included.

§ 6. Recruitment Standards

Knowledge, Skills and Abilities: Knowledge, skills, and abilities set forth the requirements of employees for successful work performance in positions allocated to the class. They are written in terms of what is required of new employees at time of appointment or promotion. They do not specify the desirable qualifications of a thoroughly experienced employee in the class. Their purpose is to be of assistance in the recruitment, examination, and placement of applicants. They may be used also to identify training guides to develop promotability of lower level employees. Personal characteristics such as honesty, courtesy, dependability, sobriety, and industry are not mentioned; they are requirements for all employees in all classes of work in State service.

Minimum Education and Experience: This section is a translation of the knowledge, skills, and abilities section into quantifiable training and experience standards. It is a Statement of the minimum qualification requirements which an applicant for a vacant position in the class should possess at the time of appointment. As prerequisites, these are requirements for all employees in all classes of work in the State service.

Special Requirements: In this particular section are listed specific licenses or certificates needed by an employee to perform a given job. Such licenses are those required for persons engaged in certain occupations such as law, medicine, or jobs requiring the operation of dangerous equipment. This section may also be used to specify conditions of physical endurance of emotional stability highlighted by demand of positions in a class, where such conditions are primary selection factors.

§ 7. Benchmarks

A benchmark is a description of a real position having duties and responsibilities typical of a group of jobs in an occupational category, described in terms of factors which

Position Management Policy (cont.)

determine the level of the position or positions. Each benchmark includes the following sections:

Class Title: The class title is the official title to be used for payroll, position management, and other human resources and budget records. It may cover positions in several agencies and does not preclude the use of more specific working titles, if individual agencies so desire.

Major Duties: This section describes the major level determining duties of the position. This list reflects duties of a specific position and is not exhaustive.

Factor Descriptions: This section describes the relative degree of major evaluation factors present in the position. The factors described are those which are used to evaluate all positions in an occupational category. While factors are the same for all jobs in a given category of occupations, they may vary from one occupation to another. Factors which are generally common to all positions include minimum education/experience requirements, decision-making responsibility, as well as variety, complexity and scope of work. This list of factors is not exhaustive.

§ 8. Minimum Education and Experience Requirements for Each Class

It shall be the policy of the State to establish job-related minimum qualification standards wherever they are practical for each class of work in the position classification plan. The standards will be based on the required skills, knowledge and abilities common to each classification. The qualification standards and job-related skills, knowledge, and abilities shall serve as guides for the selection and placement of individuals.

The education and experience statements serve as indicators of the possession of identified skills, knowledge, and abilities and as guide to primary sources of recruitment; reasonable substitutions of formal education and job-related experience, one for the other, will be made. The State Human Resources Commission recognizes that a specific quantity of formal education or number of years' experience does not always guarantee possession of the identified skills, knowledge, and abilities for every position in a class. Qualifications necessary to perform successfully may be attained in a variety of combinations. Management is responsible for determining specific jobrelated qualifications that are an addition to minimum standards; such qualifications must receive prior approval of the State Human Resources Director. Management shall be responsible for any adverse effects

Position Management Policy (cont.)

resulting from the use of selection standards that have not been established or approved by the State Human Resources Director.

The State Human Resources Director is authorized to modify education and experience requirements for established classes consistent with this policy and the Director shall report such changes to the State Human Resources Commission.

§ 9. Maintaining the Classification Plan

The Office of State Human Resources is generally responsible for establishing, revising and maintaining the Classification Plan for the entire State government. Agency heads may report the need for classification action; or the Office of State Human Resources may initiate studies of single positions, occupational groups, or organizational groups of positions to determine that classifications are current. While central control of the Classification Plan is retained by the Office of State Human Resources, adherence to and the maintenance of the plan is the responsibility of everyone concerned with employment. This includes individual employees, immediate supervisors, agency HR directors, and agency heads.

- Employees - When an employee thinks his/her position is not in the right class, the employee should request that the supervisor conduct a review of the duties of the position. The request should include a Statement of reasons for believing the job classification is wrong. It should be reviewed by the supervisor and agency head or the representative of the agency head and if the request seems justified, the agency head should submit it, along with comments, to the Agency Human Resources Office. The position will then be studied to determine if the classification should be changed. The position will be submitted to the Office of State Human Resources if it exceeds the agency's classification flexibility or delegation of authority.
- Supervisors and Agency Heads - A major responsibility for the classification plan rests with line management - agency heads and supervisors. They are responsible for determining the duties and responsibilities of positions, for assigning individual employees to work and informing them of their assigned duties, and for reporting changes in duty assignments and organization and the need for classification action to the Agency Human Resources Office and Office of State Human Resources.

Position Management Policy (cont.)

These are integral parts of their general responsibility for efficient and fiscally responsible resource management.

- Agency HR Directors – are responsible for ensuring compliance and application of OSHR classification principles, procedures and standards including development of mechanisms for accountability, which will ensure classification decisions are applied consistently and equitably across the agency.

§ 10. Establishment and Revision of Classes

Classification studies may reveal from time to time the need to establish new classes or revise existing classes. These actions must be recommended by the State Human Resources Director and approved by the State Human Resources Commission and the Governor. Likewise, classes which are no longer used are abolished with the Commission's approval.

- Allocation and Reallocation of Positions - Every position subject to the State Human Resources Act is allocated to an appropriate class in the Classification Plan. The allocation of a position is its assignment to a class containing all positions which are sufficiently similar in duty assignments to justify common treatment in selection, compensation, and other employment processes. A class may consist of a single unique position or of many like positions.
- Tentative and Flat Rate Provisions for Temporary Classifications - The State Human Resources Director is authorized to establish temporary classifications with tentative pay grades or flat rate salaries when sufficient information is not available to make permanent classification and pay recommendations to the State Human Resources Commission. When sufficient information is available, the Director will make a recommendation to the Commission which will incorporate the temporary classification and pay into the established classification and pay plan. Such temporary classes, tentative pay grades and flat rate salaries shall be administered according to all applicable rules and regulations approved by the State Human Resources Commission.

Position Management Policy (cont.)

§ 11. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

It is compliant with the Administrative Code rules at:

- 25 NCAC 01F .0100

§ 12. History of This Policy

Date	Version
January 18, 1953	• Limit job study for any one particular job to one per year.
November 2, 1965	• Classification - Subject to the approval of the director, each agency allocate every position in the local agency to one of the classes esta in the classification plan.
December 2, 1972	• Established an apprenticeship training program in coordination with the NC Dept. of Labor.
December 13, 1974	• Policy on minimum qualification standards approved, including provision for management to be responsible for determining alternative qualifications, subject to approval by State Personnel Director.
December 15, 1969	• State Personnel Director may assign a tentative flat rate salary when there is insufficient information to determine definite classification and pay provisions within the established compensation plan.
October 29, 1975	• Clarified that management is responsible for determining specific job-related qualifications that are an addition to minimum standards; also responsible for any adverse effects resulting from the use of selection standards that have not been established by OSP.
1980	• Missing history

Position Management Policy (cont.)

<table>
<tr>
<td>December 3, 2020</td>
<td>
1. General updates to reflect current terminology such as but not limited to:
<table>
<tr><th>Current Terminology</th><th>To Be Replaced With</th></tr>
<tr><td>Economical</td><td>Fiscally responsible; resource stewardship</td></tr>
<tr><td>Manpower</td><td>Human resources; people</td></tr>
<tr><td>Manpower funds and space resources</td><td>Financial and human resources</td></tr>
<tr><td>Qualification requirements</td><td>Minimum education/experience requirements</td></tr>
<tr><td>State Personnel Act</td><td>State Human Resources Act</td></tr>
<tr><td>Position control</td><td>Position management</td></tr>
</table>
2. Job evaluation factors used in OSHR training were updated to include the current factors.
3. Updated definitions of job family, branch, job, position, and Class Spec.
4. Eliminated outdated definition of Classification Standard.
5. Included Agency HR Directors in the list of individuals responsible for maintaining the Classification Plans.
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Priority Reemployment and Mandatory Reassignment for Exempt Policymaking and Exempt Managerial Employees Policy

Contents:

§ 1. Statutory Authority

This policy applies to employees hired on or before August 20, 2013. G.S. 126-5(e) mandates the requirements for (1) the reassignment of, or (2) priority reemployment consideration for, employees removed from exempt policymaking or exempt managerial positions for reasons other than just cause.

An employee hired or reemployed effective August 21, 2013 or after has no priority reemployment or mandatory reassignment rights when he or she is removed from an exempt policymaking or exempt managerial position.

§ 2. Mandatory Reassignment

Who is eligible?

1) An employee has a mandatory right to reassignment if the employee:
   - obtained career status prior to placement in an exempt policymaking or exempt managerial position, and
   - was removed from an exempt policymaking position or an exempt managerial position, and
   - was removed for reasons other than just cause, and

   had 10 or more years of cumulative State service in subject positions, including the immediately preceding 12 months prior to placement in the exempt position.
2) An employee has a mandatory right to reassignment if the employee:

Priority Reemployment and Mandatory Reassignment for Exempt Policymaking and Exempt Managerial Employees Policy (cont.)

- had 10 or more years of cumulative State service and obtained career status prior to placement in an exempt policymaking or exempt managerial position and moved from one exempt policymaking or exempt managerial position to another exempt policymaking or exempt managerial position without a break in service, and was removed from the last exempt position, for reasons other than just cause. If the employee meets either of the above eligibility requirements, the employee shall be reassigned to a subject position:
  - within the same agency, or if necessary within another agency;
  - at the same salary grade (or salary grade equivalency) and salary rate as their most recent subject position, including all across-the-board legislative increases since placement in the position designated as exempt; and
  - within a 35-mile radius of the exempt position from which separated, except for employees who are separated effective August 7, 2014 or after, and who were hired prior to June 30, 2013, who are no longer subject to the 35-mile radium limitation for reassignment.

If the employee is offered a reassignment that meets the above criteria and refuses to accept, the mandatory right to a reassignment is terminated.

Example: Employee with15 year's continuous service-no breaks

Currently in Exempt Policymaking position at salary grade 80 - $61,500

Placed in Exempt Policymaking position after 12 years of employment

Last subject position was salary grade 75 at $49,545

Salary Grade mandate = Salary Grade 75

Salary Rate mandate = $49,545 plus three (3) legislative increases since placement in Exempt Policymaking position

+ 2% legislative increase ($49,545.00 x .02) = $ 990.90 = $50,535.90 +

4% legislative increase ($50,535.90 x .04) = $2,021.44 = $52,557.34

+ 2% legislative increase ($52,557.34 x .02) = $2,102.30 = $53,608.49

Salary Rate mandate = $53,608.49

Priority Reemployment and Mandatory Reassignment for Exempt Policymaking and Exempt Managerial Employees Policy (cont.)

§ 3. One-Time Priority Reemployment Consideration

Who is eligible?

1) An employee has a one-time priority to a position if the employee:
   - obtained career status prior to placement in an exempt policymaking or exempt managerial position, and
   - was removed from (1) an exempt policymaking position or from (2) an exempt managerial position, and
   - was removed for reasons other than just cause, and
   - had less than ten (10) years of cumulative State service in subject positions prior to placement in the exempt position.
2) An employee has a one-time priority to a position if the employee:
   - had more than 2 but less than 10 years of cumulative State service and obtained career status prior to placement in an exempt policymaking or exempt managerial position, and
   - moved from one exempt policymaking or exempt managerial position to another exempt policymaking or exempt managerial position without a break in service, and
   - was removed from the last exempt position, for reasons other than just cause.

If the employee meets either of the above eligibility requirements, the employee shall be offered any available non-exempt position:

- for which the employee has formally applied and is qualified, and
- when the position for which applied is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt position unless an offer has been made, and accepted, by:
- an employee with a mandated right to a reassignment, or
- an employee notified of or separated by a reduction in force, or
- a current State employee with greater cumulative State service subject to the State Human Resources Act.

Priority Reemployment and Mandatory Reassignment for Exempt Policymaking and Exempt Managerial Employees Policy (cont.)

§ 4. Relationship to Other Priorities

The priority for employees with less than 10 years of service who are separated from exempt policymaking or exempt managerial positions and the priority for employees separated by reduction-in-force are equal.

§ 5. Termination of Priority Reemployment Consideration

Priority consideration is terminated when an eligible employee:

- refuses an interview or offer for a position for which he or she has applied, or
- accepts a position for which he or she has applied or
- has received twelve (12) months priority consideration from the date of separation.

§ 6. Priority Consideration Continues

An employee may accept the following employment and retain priority consideration throughout the 12-month priority period:

- employment outside State government,
- a State position not subject to the State Human Resources Act,
- a temporary position, or
- a contractual arrangement.

§ 7. Agency Responsibilities

The employing agency shall inform the employee in writing of the priority reemployment consideration to be afforded no later than the time of separation.

§ 8. Sources of Authority

- N.C.G.S. § 126-1.1; 126-4(6), 126-4(10); 126-5(b), (e), (f), (g); 126-14.2; 126-14-4(g)
- 25 NCAC 01H .0701; .1000; .1001; .1003; .1004; .1005

Priority Reemployment and Mandatory Reassignment for Exempt Policymaking and Exempt Managerial Employees Policy (cont.)

§ 9. History of This Policy

Date	Version
March 1, 2007	• Clarified priority consideration for employees separated from positions designated as exempt
January 1, 2013	• HB 834 change N.C.G.S. § 126, the State Human Resources Act, to reflect a change in conditions under which an employee removed from an exempt position is eligible for priority reemployment when separated for reasons other than cause. • Priority reemployment is only provided to designated employees who were hired on or before June 29, 2013. • Eligible employees have a one-time priority for any position applied for at the same level or below that held at time of separation and priority is satisfied if an employee is offered or accepts any position regardless of distance from the employee's original workstation. • Removed priority consideration for exempt managerial employees removed for violations of N.C.G.S. § 126-14.2
August 11, 2014	• A clarification statement was added to the "Statutory Authority" section that states "Exempt employees hired on or after August 21, 2013 do not have priority reemployment rights." • Reference to "mandated reemployment" has been revised to "mandated reassignment" to match the terminology used in the law. Reference to "mandatory right to a position" has been changed to "mandatory right to reassignment." • Change in law to include priority reemployment or mandatory reassignment rights for exempt employees who transfer between exempt positions without a break in service.

Priority Reemployment and Mandatory Reassignment for Exempt Policymaking and Exempt Managerial Employees Policy (cont.)

	• Added “reemployment” when referencing the “one-time priority” to match the terminology in the law. • Employees who were hired prior to June 30, 2013 and separated from the exempt position on or after August 7, 2014, who meet the eligible requirements for the mandated reassignment rights are no longer subject to the 35-mile radium limitation for reassignment. • In the “Who is Eligible” section, deleted the bullet that referenced an offer being made to a RIF employee as having greater rights than an exempt employee. The priority rights are equal for these employees as stated in the “Relationship to Other Priorities” section of the policy.
December 3, 2020	• Policy reviewed by the Recruitment Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on October 1, 2020. • General editorial changes to text, grammar, and language. All changes were minor wording and format changes for clarification.

Promotion Policy

Contents:

§ 1. Definition

Promotion is a change in status upward resulting from assignment to a position assigned a higher salary grade.

§ 2. Policy

When it is practical and feasible, a vacancy shall be filled from among the eligible employees; a vacancy must be filled by an applying employee if required by the Promotional Priority Policy. Selection shall be based upon demonstrated knowledge, skills, abilities, and length of service.

§ 3. Salary Determination

§ 3.1. Use of Pay Administration Policy

When an employee is promoted, the new salary will be determined under the steps in the Pay Administration Policy. A salary change on a horizontal transfer cannot create internal salary inequity. See the portion of the Pay Administration Policy on the equity pay factor for further details.

Unless OSHR has provided approval, the in-range adjustment cannot exceed the increase amount established in the agency or university's flexibility authorization. Documentation for the new salary must be established under the procedures in the Pay Administration Policy.

Promotion Policy (cont.)

§ 4. Delayed Optional Increases

If the desired amount of increase is not given on the effective date, increases, up to the full allowable amount, may be given at later dates on a current basis.

Note: If increases are to be given at later dates, a notation must be entered showing the dollar amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must state “Promotion Increase” in the description of action block, which will denote that this is a delayed increase.

If no increase is to be given at a later date, no notation is necessary.

§ 4.1. Salary Increase Authorization Cancelled

If a subsequent promotion, reallocation up or down, demotion or reassignment occurs, this cancels the authorization to grant additional increases as a result of the previous promotion.

§ 5. Temporary Promotion

Temporary promotions may be made when an employee is placed in an “acting” capacity for a specified period of time. At the discretion of management, one of the following may occur:

- The employee may be placed in the higher level position (if vacant) with a promotional increase and with an understanding that the employee will return to the former position and salary when the position is filled; or
- A promotional salary increase may be given in the present position with the understanding that the salary will be decreased when the “acting” capacity ends. The agency shall indicate on the PD-105 form (or other similar form) the position number, classification, and salary grade for which the employee is serving in an “acting” capacity and the expected duration. The salary may not exceed the maximum of the “acting” salary grade.

The provisions for salary increases for permanent promotions apply; however, the amount of the promotional salary increase shall be determined by the degree of assumption of the higher level duties.

Promotion Policy (cont.)

§ 6. Qualifications

For promotion to another position, the employee must possess at least the minimum recruitment standards, or their equivalent, as set forth in the class specification.

§ 7. Approvals and Exceptions

Any salary actions outside the scope of an agency's flexibility authorization must be submitted to the Office of State Human Resources for review and approval under the process in the Pay Administration Policy.

Any exceptions from this Policy shall be submitted to the Office of State Human Resources under the exception and variance process in 25 NCAC 01A .0104.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2),(6)
- 25 NCAC 01D .0300

§ 9. History of This Policy

Date	Version
May 16, 1960	Salary of the employee shall be increased to the new minimum or by one step, whichever is larger.
December 10, 1975	Revised competitive services policy to eliminate competitive promotions.
February 1, 1979	Promotion of probationary employees in the competitive service. Recommends that employees whose jobs are reviewed while in probationary status be moved to the new level if they qualify.
December 1, 1983	Provided that upon promotion a salary may be increased by more than two steps if the agency can submit sufficient justification.

Promotion Policy (cont.)

April 1, 1984	Allowed that if an employee's salary is above the maximum as a result of a reallocation down, no increase may be given but the salary may remain above the maximum.
December 1, 1984	Added provision for temporary promotions - employees placed in an acting capacity.
December 1, 1985	Competitive Service provisions deleted.
October 1, 1986	Salary rate provisions revised to allow increase up to difference in salary grade change. Performance salary increase provisions deleted.
December 1, 1986	Definition of promotion revised.
July 1, 1989	Provided exception for promotional increase if it would create inequities or if necessary because of budget considerations, provided the specific salary is published in advance of the promotional offer.
January 1, 1990	Revised to conform to new pay plan - % increase instead of steps, provision for giving part of increase and delaying the rest - must be given within 24 months, must state reason, give balance, etc.
July 1, 1990	Employee must have commensurate training and experience for salary to be increase by more than 5% on promotion. If reduction and subsequent promotion occurs, employee should not get salary increase; however, salary increase may be given if actions occurred as much as 24 months apart.
September 1, 1991	Directly added to related experience.
March 1, 1992	Policy is revised to allow an increase up to 5% for each grade provided by the promotion if the promotion is within the same class series or occupational group, instead of having to qualify for above minimum. If the promotion is to a job in a different occupational group, the current provision would still apply, i.e., has to qualify above the minimum.
December 1, 1993	Clarify the definition of "promotion" and make clear that it involves a change to a higher pay grade and salary.

Promotion Policy (cont.)

	Change the method by which salary increases for promotions are determined. The current policy limits promotional increases to 5% for each grade. New policy also allows salaries to be established by the same policy used for making new appointments. Reduce from 24 to 12 months the time that must lapse before a salary increase can be given after a reduction in grade with no cut in salary.
June 1, 2002	Deletes provision that delayed increases must be limited to three occurrences and must be awarded within 24 months. (Exception Case No. 02-05.)
July 1, 2005	Revised to eliminate “hiring rate” and to change “special entry rate” to “special minimum rate.”
April 14, 2022 (effective June 1, 2022)	Removed portion of policy specifying and restricting the size of a salary increase on promotion. Instead, salary should be determined under the new Pay Administration Policy. Removed material on special minimum rates, as that process has been replaced in the new Pay Administration Policy. Moved material on geographic differentials to the new Geographic Differential Policy.

Promotional Priority Policy

Contents:

§ 1. Policy

A promotional priority consideration shall be provided by all agencies, departments and universities to all current State employees who have achieved career status. All employment decisions involving recruitment, selection and priority consideration shall comply with the Equal Employment Opportunity Policy located in Section 1 of the State Human Resources Manual.

§ 2. Nature of Priority

Promotional priority consideration shall be provided as outlined below. If it is determined that an eligible employee and an outside applicant have “substantially equal qualifications,” then the eligible employee must receive the job offer over an outside applicant. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

Promotional priority is applied when there is no reasonable or justifiable difference in the selected non-state applicant’s job-related qualifications and the most qualified state employee applicant seeking a promotion who received the highest evaluation by the hiring manager or hiring team. Thus, a promotional priority serves as a tiebreaker when, after all evaluation factors are considered, an internal career status applicant seeking a promotion is evaluated as equal to the highest evaluated applicant from outside state government. When the top interviewed applicant receives the highest evaluation based on merit, all interviewed state applicants with lower evaluations do not have promotional priority claims. Qualification determinations for referred applicants are made by the hiring manager or hiring team. Promotional priority serves to benefit the

Promotional Priority Policy (cont.)

state employee when a non-state employee and the state employee's qualifications would otherwise be equal, and has ~~no~~ bearing on determining the decision to grant or not grant an interview.

"Substantially equal qualifications" occur when the employer cannot make a reasonable and 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.

§ 2.1. Grade to Grade

If a State employee with career status applies and is qualified for another state position of a higher salary grade and has substantially equal qualifications as those of the highest ranking applicant who is not a State employee, the State employee shall receive the job offer.

§ 2.2. Grade to Band or Band to Grade

For employees applying for positions in a different classification system than their current system (i.e. from graded to banded or vice versa) – a salary grade equivalent will be assigned for each competency level within a career banded classification to determine if the action is a promotion. If a State employee with career status applies and is qualified for another state position representing a promotion, and has substantially equal qualifications as those of the highest ranking applicant who is not a State employee, the State employee shall receive the job offer.

The salary grade equivalent shall not used when determining the promotional priority for a State employee who is currently in a banded class and is applying for another position in a banded class nor is the salary grade equivalent to be used to determine salaries.

§ 2.3. Band to Band

For band to band actions, a promotion is defined as employee movement from one position to another with the same banded classification with a higher competency level or employee movement from one position to another with a different banded classification with a higher journey market rate. Then, if a State

Promotional Priority Policy (cont.)

employee with career status, in a banded position, applies and is qualified for another banded state position that represents a promotion, and has substantially equal qualifications of those of the highest ranking applicant who is not a State employee, the State employee shall receive the job offer.

An outside applicant is any applicant who is not employed by a State agency, department or university in a position that is subject to the recruitment and selection policies or rules adopted by the State Human Resources Commission as authorized by N.C.G.S. § 126 (State Human Resources Act).

§ 3. Relationship to Employees with Priority Employment Status

State employees with priority employment status who were:

1. separated from exempt policymaking or exempt managerial jobs for reasons other than cause,
2. notified of or separated by reduction in force, or
3. returning from workers' compensation leave are not considered outside applicants for the purpose of the promotional priority policy.

In compliance with N.C.G.S. § 126-7.1(f), a State employee who has been notified of or separated due to a reduction in force shall receive priority consideration over all other applicants including current State employees who have substantially equivalent qualifications.

§ 4. Appeals

Any State employee with career status who has reason to believe that a promotion was denied due to the failure of the agency, department or university to afford the foregoing priority as required by N.C.G.S. § 126-7.1(e), may appeal through the employee grievance process at the agency, department or university in which the vacancy existed.

Promotional Priority Policy (cont.)

§ 5. **Sources of Authority**

- N.C.G.S. § 126-1.1, 126-4(6), 126-7.1
- 25 NCAC 01H .0801, 0802

§ 6. **History of This Policy**

Date	Version
March 1, 2007	• Defined outside applicant for purpose of promotional priority as one who is not subject to Articles 1, 2, 5, 6, 7, 8, 13, and 14 of N.C.G.S. § 126.
July 1, 2007	• Added requirements for career banded classes
August 19, 2007	• Deletes definition of “career status” since it is defined in Section 3.
June 1, 2015	• In the “nature of priority” section, clarified priority when applicant pool only has current State employees and clarified that “substantially equal qualifications” must be justifiable. • Clarified the definition of “outside” applicant in relationship with N.C.G.S. § 126. • Amended the definition of “band to band” priority to mirror new definition of promotion in the career banded salary administration policy. • Added clarification from N.C.G.S. § 126-7.1(f) related to relationship of priority with RIF priority employees. This was not new legislation; it was just not clearly stated in the policy. • Deleted the section on “Equal Employment Opportunity Consideration”. This detailed section about EEO is not necessary as it is duplicative of EEO policy. A statement about EEO and reference to the EEO policy was added to the “policy” section at the beginning of the policy. • Corrected “appeals” section to mirror the current appeals process Updated policy to include a one-time opportunity for

Promotional Priority Policy (cont.)

	creditable retirement service to be used to reach an employment milestone and to therefore earn a Service Award upon retiring. This can only be utilized in a retirement situation.
October 1, 2020	• Policy reviewed by the Recruitment Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on December 3, 2020. • General editorial changes to text, grammar, and language. All changes were minor wording and format changes for clarification.
April 1, 2021	• Policy reviewed by the Recruitment Division to clarify that higher evaluated state employees defeat lower evaluated state employees' promotional priority claims and only the highest evaluated state employee can assert a promotional priority claim and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on April 1, 2021. • New paragraph added after first paragraph in "Nature of Priority" section of Policy.

Reallocation Policy

Contents:

§ 1. Definition

Reallocation is the assignment of a position to a different classification, documented through data collection and analysis according to customary professional procedure and approved by the Human Resources Director.

For purpose of the Salary Adjustment Fund, the following references are considered reallocations:

- Reallocation – assignment of a graded or banded position to a higher level classification to recognize higher level duties.
- Grade-Band Transfer – initial reallocation of graded positions to banded classes where salary increases are required to recognize higher level duties. (See Career Banding Salary Administration Policy.)

The purpose of a reallocation pay increase is to reward the employee for more responsible and more difficult duties than those in the current classification.

§ 2. Salary Rate for Reallocation to Same or Higher Grade

When an employee's position is reassigned to the same grade or a higher grade, the new salary will be determined under the steps in the Pay Administration Policy. A salary change on a reallocation should not create internal salary inequity. See the portion of the Pay Administration Policy on the equity pay factor for further details.

Unless OSHR has provided approval, the salary increase cannot exceed the increase amount established in the agency or university's flexibility authorization.

Reallocation Policy (cont.)

Documentation for the new salary must be established under the procedures in the Pay Administration Policy.

§ 3. **Salary Rate for Reallocation to a Lower Grade**

When an employee's position is assigned to a lower grade, one of the options listed below shall be implemented. It is a management responsibility to avoid creation of salary inequities among employees. Each case must be evaluated to determine which of the salary administration alternatives is most appropriate, based on the circumstances as documented to the Office of State Human Resources, on appropriate forms, by the employing agency.

When reduction in level results from:	the salary:
removal of duties and responsibilities because of change in demonstrated motivation, capability, acceptance of responsibility or lack of performance,	shall be reduced at least to the maximum as required by the Demotion/Reassignment Policy.
position redesign because of management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance,	may remain above the new maximum as long as the employee remains in the same classification or is promoted to a higher level position.
a change in the labor market or some other reason not related to change in the duties and responsibilities of the position, though the position must be reallocated to the approved classification and grade,	may remain unchanged by election of management to maintain the employee's current classification and grade by working the employee against the lower level position, so long as the employee continues to occupy the same position or is in the same classification. When vacated, it shall be filled at the lower level.

Reallocation Policy (cont.)

§ 4. Delayed Optional Increases

If increases within the range are recommended, they should be given on the effective date of the reallocation. If the desired amount of increase is not given on the effective date, increases, up to the full allowable amount, may be given at later dates on a current basis.

If increases are to be given at later dates, a notation must be entered on the form showing the dollar amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must state “Reallocation Increase” in the description of action block, which will denote that this is a delayed increase.

If no increase is to be given at a later date, no notation is necessary.

§ 5. Salary Increase Authorization Cancelled

If a subsequent promotion, reallocation up or down, demotion or reassignment, or horizontal transfer to a different class occurs, this cancels the authorization to grant additional increases as a result of the previous reallocation.

§ 6. Reallocation within 12 Months of a Reduction

If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and within twelve months of the reduction the employee is reallocated:

- The employee shall not be considered for a reallocation increase unless the reallocation is to a grade higher than the grade held prior to the reduction.
- If reallocated to a higher grade, the Pay Administration Policy shall be used.

§ 7. Approvals and Exceptions

Any salary actions outside the scope of an agency’s flexibility authorization must be submitted to the Office of State Human Resources for review and approval under the process in the Pay Administration Policy.

Reallocation Policy (cont.)

Any exceptions or variances from this Policy shall be submitted to the Office of State Human Resources under the exception and variance process in 25 NCAC 01A .0104.

§ 8. Determining Effective Date

Reallocation shall be made effective on the first day of the pay period. Form PD-118 should be submitted to the Office of State Human Resources as established in the guidelines of the Agency Special Processing Agreement. Otherwise, submit Form PD-118 thirty days prior to the proposed effective date to allow adequate time for study and processing of the request. Requests received after the first day of the month are subject to be made effective no earlier than the first of the following month, and requests can be effective only after complete information is available to make a decision. If any party is delayed in carrying out its responsibilities, the employee should not be caused to suffer delay; and the effective date will be revised to the most reasonable date consistent with the time that complete information would have been available to make the decision on reallocation of the position.

§ 9. Qualifications

When an employee's present position is reallocated upward, the employee must ordinarily possess the minimum recruitment standards, or their equivalent, as set forth in the class specification. If a classification audit has verified that duties, skills, and knowledge are being demonstrated at a higher level and the position is reallocated, the employee may be reallocated by waiver of the stated education and experience requirements.

If reallocation downward is made to a position within the same field of work, the employee automatically qualifies. However, if a reallocation down is to a different field of work, the employee must meet the minimum recruitment standards, or their equivalent, as set forth in the class specification.

§ 10. Sources of Authority

This policy is issued under any and all of the following sources of law:

Reallocation Policy (cont.)

- N.C.G.S. § 126-4(2),(5),(6)
- 25 NCAC 01D .0200

§ 11. **History of This Policy**

Date	Version
March 1, 1966	Reclassification no longer considered as promotions requiring salary increase. Left up to agency whether to grant increase and, if one is given, agency determines whether to change anniversary date.
October 29, 1975	Policy revision for waiver of qualifications for reallocated positions.
January 1, 1976	Revised salary policy to permit an employee's salary to remain above the maximum. Added policy on effective dates of reallocation.
August 1, 1977	Revised salary policy to make it mandatory to reduce salary to maximum; however; reduction may be delayed one year if agency presents a plan and justification that assures opportunity to restore to a position of former grade level.
January 1, 1979	Salary Determination Upon Reallocation. (Exception) To provide for the employee to adjust to the pay reduction, the reduction may be delayed by management for up to one year from the date of the position's allocation to the lower grade level. (Will not have to submit plan.)
August 1, 1980	Allowed salaries to remain above the maximum if determined in the classification reallocation that the employee was not at fault in any way. However, if the reclassification to a lower level was the result of an employee's lack of performance or lack of ability to perform, the reallocation would be handled exactly as a demotion.
April 1, 1984	Salary may remain the same as long as the employee remains in the same classification or is promoted to a higher level position. Previously state "in the same position."
December 1, 1985	Deleted competitive service provisions.
October 1, 1986	Salary rate provisions revised - performance increase provisions deleted.
December 1, 1986	Definition of reallocation revised.
November 1, 2005	Revised to define Reallocation for purposes of the Salary Adjustment Fund.
April 14, 2022 (effective June 1, 2022)	Removed portion of policy specifying and restricting the size of a salary increase on reallocation. Instead, salary should be determined under the new Pay Administration Policy. Removed material on special minimum rates, as that process has been replaced in the new Pay Administration Policy. Moved material on geographic differentials to the new Geographic Differential Policy.

Reasonable Accommodation Policy

Contents:

§ 1. Purpose

It is the policy of the State of North Carolina to reasonably accommodate qualified individuals with disabilities and those who are pregnant unless the accommodation would impose an undue hardship. While many pregnant individuals and individuals with disabilities can work without accommodation, other qualified applicants and employees face barriers to employment without the accommodation process.

The purpose of this policy is to assist agency and university employers, current employees, and applicants for employment in requesting and processing reasonable accommodation requests. The overall intent of this policy is to ensure that the State of North Carolina fully complies with the Americans with Disabilities Act (ADA), Pregnancy Discrimination Act, the Americans with Disabilities Amendment Act (ADAA), and maintains equal opportunity in employment for all qualified persons with disabilities and those who are pregnant. This policy also prohibits retaliation against employees.

§ 2. Definitions

Disability – a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or being regarded as having such an impairment.
Essential Functions – the fundamental duties of the position or the primary reasons the position exists.
Pregnant – concerning pregnancy, childbirth, or a related medical condition.

Reasonable Accommodation Policy (cont.)

Qualified Individuals with Disabilities - a qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job inquestion.

Reasonable Accommodation – a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability or one who is pregnant to enjoy equal employment opportunities.

Undue Hardship - an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financialresources, and thenature and structure of its operation.

§ 3. **Coverage**

This policy applies to all applicants and employees with qualifying disabilities or those who are pregnant. If requested, reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time or are considered “probationary” or “noncareer status”, as well as temporary employees.

§ 4. **Reasonable Accommodation (Disability)**

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if requested and if it would not impose an "undue hardship" on the operation of the employer's business.

Reasonable accommodation for a disability may include, but is not limited to:

1. Making existing facilities used by employees readily accessible to and usable by persons with disabilities such as modifying existing office equipment for an employee in awheelchair.
2. Job restructuring, modifying work schedules, reassignment to a vacant position such as allowing an employee with diabetes regularly scheduled breaks during the workday to eat properly, monitor blood sugar and insulin levels, or allowing an employee with cancer leave to have radiation or chemotherapy treatments.
3. Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters such as

Reasonable Accommodation Policy (cont.)

providing a deaf applicant a sign language interpreter during the job interview or providing a blind employee someone to read information posted on a bulletin board.

Agencies may consider proposing temporary accommodation(s) if the agreed upon accommodation cannot be provided immediately.

§ 5. **Reasonable Accommodations (Pregnancy)**

A covered employer is required to make a reasonable accommodation for the pregnancy of a qualified applicant or employee if requested and if it would not impose an "undue hardship" on the operation of the employer's business.

Reasonable accommodations may include:

1. Reistributing marginal or nonessential functions (for example, occasional lifting) that a pregnant worker cannot perform, or altering how a non-essential or marginal function is performed.
2. Modifying workplace policies, such as allowing a pregnant worker more frequent breaks or allowing her to keep a water bottle at a workstation even though keeping drinks at workstations is generally prohibited.
3. Modifying a work schedule so that someone who experiences severe morning sickness can arrive later than her usual start time and leave later to make up the time.

§ 6. **Accommodations that May Not be Considered Reasonable**

There are several modifications or adjustments that are not considered forms of reasonable accommodation. An employer does not have to eliminate an essential function from the position, nor is an employer required to lower quality or production standards to make an accommodation, as long as those standards are applied uniformly to employees with or without a disability.

An employer does not have to create a new position to accommodate an employee. An employer is not obligated to provide personal use items needed in accomplishing daily activities both on and off the job (i.e., eyeglasses, hearing aids, prosthetic limbs, or a wheelchair). Furthermore, an employer is not required to provide personal use amenities, such as a refrigerator, if those items are not provided to employees without disabilities.

Reasonable Accommodation Policy (cont.)

§ 7. **Process to Request Reasonable Accommodation**

Employees:

1. The employee shall inform their supervisor, EEO Officer, or HR Director or designee of the need for an accommodation. Supervisors who have been notified by an employee of an accommodation need should contact the designated EEO or HR official for assistance.
2. The EEO Officer or HR Director/Designee may request documentation of the individuals' functional limitations to support the request. Any medical documentation must be collected and maintained in accordance with appropriate confidentiality procedures.
3. When a qualified individual with a disability or who is pregnant has requested an accommodation, the employer shall, in consultation with the employee:
   a. Discuss the purpose and the essential functions of the particular job involved.
   b. Determine the precise job-related limitation.
   c. Identify the potential accommodations and assess the effectiveness each would have in allowing the employee to performthe essential functions of the job.

   Select and implement the reasonable accommodation that is the most appropriate for both the employee and the employer. While an employee's preference will be given consideration, the employer is free to choose among reasonably effective accommodations and may choose the one that is less expensive or easier to provide.
4. The EEO Officer or HR Director/Designee will work with the employee to obtain technical assistance, as needed.
5. The EEO Officer or HR Director/Designee will provide a written decision to the employee within a reasonable amount of time, not to exceed 30 days from original employee request, unless a longer time is agreed upon by the employee and the employer.

Applicants

1. The job applicant shall inform the supervisor, EEO Officer, or HR Director/Designee of the need for an accommodation. Hiring officials who have been notified by an applicant of a need for accommodation should contact the designated EEO or HR

Reasonable Accommodation Policy (cont.)

official for assistance. The EEO Officer or HR Director/Designee will discuss the needed accommodation and possible alternatives with the applicant.

2. The EEO Officer or HR Director/Designee will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation in provided.

§ 8. Appeals

Applicants or employees who are dissatisfied with the decision(s) pertaining to their accommodation request may file a grievance in accordance with the North Carolina State Government employee grievance policy within 15 calendar days of receiving the decision. Applicants or employees may also elect to file a grievance directly with the Equal Employment Opportunity Commission (EEOC). Individuals who file a grievance directly with the EEOC may not, however, file a contested case with the Office of Administrative Hearing if the internal process has not beencompleted.

§ 9. Source of Authority

- N.C.G.S. § 126-4; 126-5(c)(1)-(4); 126-16; 126-36; § 168A-5(b)(3)
- 25 NCAC 01L .0401

§ 10. History of This Policy

Date	Version
November 1, 2006	First version. New policy to assist agencies and employees in requesting and processing reasonable accommodation requests and to assure compliance with the ADA
October 6, 2016	• Updated the policy to include the amendment to the Americans with Disabilities Act, which is indicated as the “Americans with Disabilities Act Amendments Act.” • Updated the appeal process. Removed language that the decision could be appealed directly to the State Personnel Commission by

Reasonable Accommodation Policy (cont.)

	filing a petition for a contested case with the Office of Administrative Hearings. • Added language that a grievance may be filed within 15 calendar days of receiving the decision from the agency. The new language is aligned with the current North Carolina State Government Employee Grievance Policy (eff. 12-3- 2015).
December 3, 2020	• Policy reviewed by Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. The following changes were reported to the SHRC on December 3, 2020: • Added Pregnancy Discrimination Act to purpose statement. • Expanded what reasonable accommodation incudes. • Reasonable Accommodation (Pregnancy) section added. • Note removed from end of policy.
June 3, 2021	• Policy reviewed by Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. • OSHR received feedback that the current version of the Reasonable Accommodation policy only provides accommodations for pregnancy based on an ADA qualifying condition. The recommendation changes clarify that accommodations will be consistent with the ADA as well as the PDA requiring that if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same way as it treats any other temporarily disabled employee. Reported to SHRC on June 3, 2021.

Recruitment and Posting of Vacancies Policy

Contents:

§ 1. Policy

State Government shall meet its workforce needs through systematic recruitment, selection, and career support programs that identify, attract, and select from the most qualified applicants for State employment, and encourage diverse representation at all occupational levels of the workforce. No selection decision shall be made that will constitute unlawful discrimination in violation of State and Federal law.

This policy applies to those employees and positions that are subject to Articles 1, 2, 5, 6, 7, 8, 13 and 14 of N.C.G.S. § 126. This does not include temporary employees, or employees of the legislative and judicial branches, employees of the public school and community college systems, or other employees who are exempt from these Articles of the Human Resources Act.

§ 2. Recruitment and Selection

Each agency shall use a recruitment and selection process based on fair and valid selection criteria. Agencies shall be responsible for maintaining recruitment and selection data and documentation to support decisions and provide information to the Office of State Human Resources to prepare reports required by statute.

Recruitment and Posting of Vacancies Policy (cont.)

The Office of State Human Resources shall consult, as requested, with the agencies in the design, development, and implementation of an education program for managers, supervisors, and Human Resources professionals in the recruitment and selection process.

§ 3. Exempt Positions

While most positions are filled through systematic recruitment, it is recognized that some positions in State government are exempt from various provisions of the Human Resources Act because of the relationship between the position and the responsibility of elected or appointed officials expected to implement the public policy of the State. While these positions are exempt from various provisions of the Human Resources Act, they are subject to the following requirements:

1. Exempt positions, including exempt managerial positions, that are subject to the limitation on political hirings (N.C.G.S. § 126-14.2) or the open and fair recruitment requirements (N.C.G.S. § 126-14.3) of Chapter 126 must follow the posting, recruitment, and selection requirements of this policy.
2. If an individual applies for an exempt position, written notification that a position is exempt shall be given to the individual at the time the individual makes application for the exempt position. Written notification that the position is exempt may be contained in the vacancy announcement if the position is posted as exempt, or in a letter that either acknowledges acceptance of an application for an exempt position or contains an offer of employment for an exempt position or a notification that the position is exempt.
3. In addition, written notification that a position is exempt shall be given to an employee placed in an exempt position not less than 10 working days prior to the employee's first day in the exempt position.
4. If an employee occupies a subject position that is subsequently designated as exempt, the agency shall provide written notification to the employee that the position has been designated exempt. The exemption shall apply to the employee 10 working days after receiving written notification.

Recruitment and Posting of Vacancies Policy (cont.)

§ 4. Vacancy Announcement

Vacant positions to be filled in State government shall be publicized by the agency having the vacancy to permit open and fair competition for all interested employees and applicants. The recruitment and selection process shall be consistently applied, nondiscriminatory and promote open and fair competition and the hiring of a diverse workforce.

Each vacancy will be described in an announcement which includes at minimum:

1. For graded classes: the position number, classification title, salary grade and range, essential functions, knowledge, skills, abilities, minimum education and experience, and any vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0635(c), the application period, and the appropriate contact information.
2. For banded classes: the position number, banded class title, banded class salary range or recruitment range corresponding to the competencies and duties, salary grade equivalency, essential functions, competencies, minimum education and experience, vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0635(c), the application period, and the appropriate contact information.
3. For all vacancy listings: a closing date shall be given unless the classification has been determined as critical. Factors used in determining critical classifications shall include: agency turnover; number of positions in class; geographic location; scarcity of skills; safety, health or quality of care for clients. Such critical classifications shall be approved by the Human Resources Commission. On those classes determined to be critical, which are considered open, continuous postings, agencies shall determine how long applications shall be considered active.

§ 5. Minimum Qualifications

The employee or applicant must possess at least the minimum qualifications required for the position being filled. Minimum qualifications are the education, experience, and knowledge, skills, and abilities/competencies in the vacancy announcement. The minimum education and experience qualifications on the vacancy announcement shall reflect the education and experience that are in the class specification and shall not be

Recruitment and Posting of Vacancies Policy (cont.)

altered. The knowledge, skills, and abilities/competencies in the vacancy announcement shall bear a direct and logical relationship to the minimums on the class specification, class administration guidelines developed by the Office of State Human Resources, and the specific position description. This requirement shall apply in new appointments, promotions, demotions or reassignments, transfers, redeployments, and reinstatements. Please refer to Section 4.3 of the Pay Administration Policy for information related to Trainees and Trainee Progressions.

Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable substitutions of formal education and job-related experience, one for the other, may be made. The Office of State Human Resources shall make the final determination as to whether the employee or applicant meets the minimum qualifications in questionable selection situations.

§ 6. Management Preferences

Agency management is responsible for determining the vacancy-specific knowledge, skills and abilities/competencies that are in addition to minimum education and experience requirements.

Hiring Managers cannot add a Management Preference for a degree or license or additional years of experience when the classification is one that allows substitution of experience for education to meet the minimum qualifications, except through the approval process described below. This includes:

- A preference for a specific academic degree or major that is not in the minimum Education and Experience in the class specification.
- Additional education above what is in the minimum education and experience in the class specification.
- A preference for a degree over related experience.

This does not prevent management from adding a preference that a candidate possess a certification that is job related.

If management believes a vacancy requires education or license beyond the minimum, such a preference may only be included with approval from the Agency Human Resources Director or designee. Agency Human Resources directors shall report all management preferences that require Agency Human Resources director or designee

Recruitment and Posting of Vacancies Policy (cont.)

approval to the Office of State Human Resources on a quarterly basis. Such vacancy-specific qualifications shall bear a logical and job-related relationship to the minimum requirements. Management shall be responsible for the adverse effects resulting from the use of qualification standards that are unreasonably construed.

§ 7. Posting Period

Each permanent position to be filled shall be posted for not less than five working days. Temporary positions and positions for State government interns are not required to be posted. The following posting requirements apply:

§ 7.1. Internal to State Agency

The following applies only to postings that are only open to current employees of the posting agency.

Vacancies to be filled from within the agency workforce shall be prominently posted in at least the agency Human Resources office and the particular work unit of the agency having the vacancy. If the opening is not listed on a website maintained by the Office of State Human Resources, then the vacancy announcement shall be emailed to all employees of the agency. Applicants who may be considered for postings that are "For current [agency] employees" are probationary, permanent, and time limited employees currently employed by the posting agency and former agency employees who have priority reemployment rights due to a Reduction in Force from the agency posting the job. Agencies may choose to allow temporary employees[1] currently working with the posting agency to apply for "Internal to Agency" postings by indicating they are eligible to apply in the job posting. If not specifically noted in the posting, temporary employees are not eligible to apply.

§ 7.2. Internal to NC State Government and UNC System Employees

The following applies only to postings that are only open to current state government and UNC System employees.

[1] For the purposes of sections 7.1 and 7.2, temporary employee includes temporary employees employed by Temporary Solutions or directly by the agency. It does not include temporary employees of a third-party staffing agency or contractors.

Recruitment and Posting of Vacancies Policy (cont.)

Vacancies to be filled by applicants who are NC state government or UNC System employees shall be posted in the agency Human Resources office and the particular work unit of the agency and shall also be listed on a website maintained by the Office of State Human Resources. Applicants who may be considered for postings that are "Internal to State Government and UNC System employees" are probationary, permanent, and time limited employees, including current State agency and UNC System employees and State agency and UNC System employees who have priority reemployment rights due to a Reduction in Force from a State agency or university. Agencies may choose to allow temporary employees currently working with a state agency to apply for "Internal to NC State Government and UNC System employees" postings by indicating they are eligible to apply in the job posting**.** If not specifically noted in the posting, temporary employees are not eligible to apply.

§ 7.3. Internal and External to State Government

Vacancies to be filled from within the state government or outside the state government workforce shall be posted in the agency Human Resources office and the particular work unit of the agency and shall also be listed on a website maintained by the Office of State Human Resources. In addition, vacancies to be filled from outside the state government workforce shall be listed with the Division of Employment Security of the Department of Commerce, either directly or through the Department of Commerce's job listing website.

When a vacancy is listed with the Division of Employment Security of the Department of Commerce, the listing agency may not fill the job opening for at least 21 days after the listing has been filed, and the local office with which the listing is made must be notified by the agency within 15 days after the vacancy is filled. Upon agency request, the Division of Employment Security of the Department of Commerce may waive the waiting period for filling listed vacancies in position classifications for which the Human Resources Commission has recognized that candidates are in short supply, and it hinders the agency in providing essential services.

Recruitment and Posting of Vacancies Policy (cont.)

§ 8. Posting Requirements Not Applicable

Posting is not required when an agency determines that it will not openly recruit. The decision shall be based upon a bona fide business need and is the responsibility of the agency head. Employees filling these positions are required to meet the minimum education and experience requirements of the position. Examples include vacancies which are:

- committed to a budget reduction,
- used to avoid a reduction in force,
- used to affect a disciplinary transfer or demotion,
- to be filled by transfer of an employee to avoid the threat of bodily harm,
- to be filled immediately to prevent work stoppage in constant demand situations, or to protect public health, safety or security,
- designated exempt policymaking [G.S. 126-5(d)],
- to be filled by chief deputies and chief administrative assistants to elected or appointed agency heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed agency heads, chief deputies, or chief administrative assistants,
- to be filled by an eligible exempt employee who has been removed from an exempt position and is being placed back in a position subject to all provisions of the Human Resources Act,
- to be filled by a legally binding settlement agreement,
- to be filled in accordance with a formal, pre-existing written agency workforce plan,
- to be filled immediately because of a widespread outbreak of a serious communicable disease, and
- to be filled as a result of a redeployment arrangement.
- to be filled by an employee who has already been hired into the position in trainee status, including without limitation trainees following the completion of an OSHR-recognized apprenticeship program.[2]

[2] See 25 NCAC 01K .0502 for additional details regarding apprenticeship programs. For additional details about trainee status, see the section entitled “Trainee Status” in the Appointment Types and Career Status Policy and the section entitled “Trainees” in the Pay Administration Policy.

Recruitment and Posting of Vacancies Policy (cont.)

§ 9. Violation of Posting Requirements

The Office of State Human Resources may withhold approval for an agency to fill a vacancy if the agency cannot validate that it complied with these posting requirements. If any agency hires any person in violation of the posting requirements, and it is determined by the Office of State Human Resources that the employment of the person hired must be discontinued as a result of the posting violation, the agency shall pay such person for the time worked.

§ 10. Application for Employment

Applicants applying for a State vacancy or a temporary job must complete and submit a State Application Form (Form PD-107 or its equivalent) to the contact person in the hiring agency. In addition:

- Persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 435) must certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1; and
- Persons eligible for veteran's preference shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, with the application. The agency shall verify eligibility for veterans' preference.
- Persons eligible for National Guard preference shall submit a copy of the NGB 23A (RPAS), with the application. The agency shall verify eligibility for National Guard preference.

The knowing and willful failure of a subject person to certify compliance when submitting an application for formal consideration, or to falsely certify compliance, may be grounds for dismissal. See the Selection of Applicants Policy for further details on what may occur when an agency discovers that an applicant provided false or misleading information on a State application.

§ 11. Intra-Agency Application Sharing Pilot Program

Agencies may offer an option to applicants to have their application considered for other positions posted within the agency that are within the same or comparable classification for

Recruitment and Posting of Vacancies Policy (cont.)

which the applicant applied and was qualified. OSHR will provide further guidance no later than January 2024.

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§ 12. Recruiting or Search Firms

Under the following conditions, agencies may use recruiting or search firms to help fill vacant positions, and agencies may pay firms for those services. (This text summarizes Attorney General legal opinions on N.C.G.S. § 126-18 issued on November 4, 1988, and June 30, 2000. Copies of these legal opinions will be available on the Office of State Human Resources website.)

1. The agency must have posted the position openly, using the normal posting procedures required by this policy, unless the position is exempt from statutory posting requirements.
2. The agency must determine and document that the position is particularly difficult to fill. No particular form is required for this documentation.
3. It must be the practice of the recruiting or search firm to recruit job hunters for positions, rather than simply having job hunters signed up with the firm for the purpose of finding new jobs.

NOTE: The 1988 legal opinion notes, “A state agency could not simply ask an employment agency for help in finding a candidate for a job, hire someone listed with the employment agency, and then pay the agency’s fee, no matter how much difficulty the State had experienced in recruiting for the position in question.”

4. The recruiting or search firm must not charge fees to persons hired as a result of their search efforts.

For one example of what complies with the law, the 1988 legal opinion notes that it complies with the law for the State to pay fees “under an arrangement by which the employer pays for the [firm’s] time and efforts in making the search, even if unsuccessful, plus an additional fee, based on the salary of the person employed, if they locate a candidate hired by the employer.”

Even if the recruiting or search firm has not complied with conditions 3 and 4 listed above, State use of the firm may comply with N.C.G.S. § 126-18 if the firm has been, for at least one year, duly licensed and supervised by the North Carolina Department of Labor as

Recruitment and Posting of Vacancies Policy (cont.)

a private employment service acting in the normal course of business. Agencies should consult their legal counsel if the recruiting or search firm has not complied with conditions 3 and 4 listed above.

§ 13. Sources of Authority

This policy is issued under the authority of any and all of the following:

- N.C.G.S. § 126-14.3 (requiring the Commission to adopt rules or policies to assure recruitment, selection, and hiring procedures that, among other things, encourage open and fair competition for positions in State government employment, assure advertisement of job openings, and require closing dates for each job opening)

This policy is compliant with:

- N.C.G.S. §§ 96-29; 126-5(b),(c), and (c7); 126-7.1; 126-14.2; 126-15; and 126-18,
- Section 39.3(a)(1) of the 2023 Appropriations Act, Session Law 2023-134, authorizing agencies, the Community College System Office, and The University of North Carolina to allow an individual the option of having the individual's application considered for future job postings at the same agency and at other agencies if the individual has been identified as a qualified applicant within the same or comparable classification.
- 25 N.C.A.C. 01H .0630 to .0641.

§ 14. History of This Policy

Date	Version
June 1, 1985	First version
October 1, 1987	Posting policy revised to comply with 1986 Immigration Reform and Control Act.
July 1, 1989	Revised to include legislative requirements for not filing jobs for 21 days when listed with Employment Security Commission Included legislative requirement for certifying compliance with Military Selective Service Act. Revised procedures for posting vacancies – must post salary if exception to promotional increase.
June 1, 1992	Revised recruitment policy to include statutory provisions for priority reemployment when notified of a reduction in force.

Recruitment and Posting of Vacancies Policy (cont.)

	Revised recruitment procedures that when a vacancy is listed with Employment Security System, the vacancy has a classification for which the State Personnel Commission has recognized that candidates are in short supply and if the agency is hindered in providing essential services of the agency, the Employment Security Commission may waiver the waiting period for agency to fill the position.
August 1, 1995	Deleted special recruitment program (targeted toward persons with skills or attributes).
September 17, 1997	Revised to implement provisions of SB 886 (nonpolitical selection of the most qualified).
February 7, 2000	Example added to “Posting Requirements Not Applicable” (Page 5) to clarify that agencies will not be required to openly recruit when a lateral appointment is made of an individual who has completed the requirements of the Governor’s Public Management Fellowship Program or the Model Cooperative Education Program.
November 1, 2000	Advisory Note added to specify that applicants must meet the minimum training and experience requirements to fill positions that are not posted.
March 1, 2007	• New policy statement. • Added clarification of the statue that requires written notification when positions are designated exempt. • Changed required posting period from seven to five working days. • Added requirements for vacancy postings for banded classes. • Defined “state government workforce.” • Clarified that the decision not to post must be based on a bona fide business need and added examples of when an agency might make this decision.
April 1, 2008	Corrected the rule citation on Page 4.
April 1, 2009	(1) Incorporates the rule change that allows a resume to be accepted in lieu of an application.

Recruitment and Posting of Vacancies Policy (cont.)

	(2) Requires that persons claiming veterans' preference submit a DD Form 214, Certificate of Release.
March 1, 2010	Deleted provision to allow the use of a resume instead of the Application for Employment (Form PD-107) upon initial application. This will ensure more uniform opportunity to provide information.
July 1, 2010	Includes competency level as a requirement for the vacancy announcement for banded classes. This rule was changed August 2009 but was not updated in the policy.
July 1, 2014	Remove requirement for agencies to maintain an individual, State HR Commission approved Merit Based Recruitment and Selection Plan. In addition, advisory notes were removed and incorporated into the policy as appropriate. The advisory note related to hiring ranges was deleted.
December 8, 2022	Added language acknowledging that agencies may utilize recruiting firms in certain circumstances, consistent with legal opinions on N.C.G.S. § 126-18 issued by the North Carolina Attorney General. Updated section discussing job listings on the Department of Commerce / Division of Employment Security website. Removed section on promotional priority, which is covered in the Selection of Applicants and other policies. Made technical updates to reflect other programs having changed since the last update in 2014.
April 20, 2023 (effective June 1, 2023)	Implemented Executive Order 278 by establishing an escalation process, requiring HR Director (or designee) approval, for management preferences that go beyond the minimum established in the classification. Added new text that defines which employees are eligible when an agency determines that it will make a posting "Internal to Agency," "Internal to State Agency and University Employees," or open to everyone. For the two types of internal postings, probationary, permanent and time-limited employees will be eligible by default, but temporary employees are included only if the job posting specifically indicates that they are eligible to apply.

Recruitment and Posting of Vacancies Policy (cont.)

	This matches existing practice at most agencies. Made other minor clarifying changes.
August 7, 2023	Clarified when a posting is labeled “Internal to Agency” or “Internal to State Agency and University Employees” and states temporary employees are eligible, temporary employees employed by Temporary Solutions or directly by the agency may apply, but not temporary employees of a third-party staffing agency or contractors.
October 19, 2023	Added, in the list of situations where a new posting is not required, references to trainee status and to completion of apprenticeship programs by trainees. Added Section 11, Intra-Agency Application Sharing Pilot Program, which states that agencies may offer an option to applicants to have their application considered for other positions posted within the agency that are within the same or comparable classification for which the applicant applied and was qualified. Added N.C.G.S. § 126-4(3) and (4) and Section 39.3(a)(1) of the 2023 Appropriations Act, Session Law 2023-134 to the Sources of Authority.

Redeployment Policy

Contents:

§ 1. Definitions

Redeployment - Redeployment is the movement of an employee from one position to another position within the same agency or the movement of an employee, or an employee and a position, from one agency to another under the following circumstances:

- The move is due to an enterprise-wide project that results in the need to utilize an employee's competencies for greater effectiveness in another area of an agency or in another agency, and
- There is no break in service.

Enterprise-wide Project - An enterprise-wide project encompasses multiple agencies, which partner to meet the project objectives that have a significant impact on the agency's business structure/operations.

§ 2. Policy

When an enterprise-wide project is undertaken or concluded and management determines, as a result of the project, that there is no longer a need in the agency for the specific competencies held by an employee, management shall work with their agency human resources office to identify other areas within the agency or other agencies where the employee's competencies are needed. If the employee's competencies are not needed within the agency, the agency's human resources office will negotiate with other agencies to secure a redeployment that is mutually beneficial to both the employee and the receiving agency.

Redeployment Policy (cont.)

§ 3. Salary Rate

When an employee is redeployed, the employee's salary rate shall not be reduced. When necessary, management may maintain the employee's current class by working the employee against the position.

§ 4. Qualifications

The employee must possess the minimum qualifications required for the class to which redeployment is made.

§ 5. Effective Date

If an employee reports to work the first workday following redeployment, the releasing agency shall carry the employee on its payroll through the day prior to the effective date of the redeployment even though that day may fall on a non-workday.

An exception may be made when the releasing date falls on a non-workday at the first of the month, in which case the date to begin work should be made on the first day of the month. If approved leave or holidays are involved, the releasing agency and the receiving agency shall make an agreement as to which agency will pay the employee.

§ 6. Benefits Transferred

When an employee redeploys to another agency to a position subject to the Human Resources Act (SPA), all unused sick and vacation leave shall be transferred.

If the employee redeploys to an exempt position in which leave will not be credited at the same rate as employees subject to the SPA, accumulated vacation and sick leave may be transferred subject to the receiving agency's approval. If vacation leave is not transferred, it shall be paid in a lump sum not to exceed 240 hours. Sick leave may be transferred and held for future use should the employee transfer back to an SPA position or it may be applicable toward retirement.

Redeployment Policy (cont.)

§ 7. Personnel Records Transfer

The personnel file, as defined by statute and in the Personnel Records Policy, shall be transferred to the receiving agency.

§ 8. Appeal of Redeployment

The redeployment of an employee is not a grievable issue under GS 126-34.

§ 9. Decline of Redeployment

If an employee declines the redeployment, the employee will be terminated and will not be eligible for RIF priority and/or severance pay.

§ 10. Posting

The receiving agency does not have to post a vacant position to accommodate a redeployment arrangement.

§ 11. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish policies governing "[c]ompensation plans."
- N.C.G.S. § 126-4(4) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish "[r]ecruitment programs designed to promote public employment, … attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions."
- N.C.G.S. § 126-4(5) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish policies governing leave "and other matters pertaining to the conditions of employment."
- N.C.G.S. § 126-4(10) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish "[p]rograms of employee assistance, … safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote

Redeployment Policy (cont.)

efficiency of administration and provide for a fair and modern system of personnel administration."

§ 12. History of This Policy

Date	Version
January 1, 2007	First version. New policy provisions for use when an enterprise-wide project results in the need to utilize an employee's competencies for greater effectiveness in another area of an agency or in another agency.

Reduction-In-Force Policy

Contents

§ 1. Policy

An agency or university has the authority to separate an employee whenever it is necessary due to:

- Shortage or loss of funds;
- Shortage or loss of work;
- Abolishment of a position; or
- Other material changes in position duties or organization

No loss of funds shall be required as a precondition for a reduction in force (RIF); however, an agency or university may not use the RIF process to circumvent the disciplinary process required to separate or demote an employee for a disciplinary reason.

RIF procedures also apply to position or budgetary changes that result in an involuntary reduction in an employee's work hours.

§ 2. Retention Factors

Retention of employees in classes affected by a RIF action shall be based on a fair and systematic consideration, at a minimum, of the following factors:

- Type of appointment;
- Relative efficiency;
- Actual or potential adverse impact on the diversity of the work force; and
- Length of service.

Reduction-In-Force Policy (cont.)

Although all retention factors must be evaluated, they may be weighted differently for each RIF event to meet the needs of the employing agency or university.

§ 3. Area of Analysis for RIF:

The analysis may include all or part of an agency (a unique work unit, division or entire agency/university). Differences in operation, work function, funding source, staff, and personnel administration may be considered when determining the appropriate area of analysis. However, the analysis to avoid a RIF must apply to the entire agency/university.

1. **T**ype of Appointment: Neither temporary nor probationary employees in their initial 12 months of employment (or initial 24 months of employment for sworn law enforcement officers) shall be retained in classes in which employees with permanent appointments (those who have satisfactorily completed a probationary or equivalent trial period) must be separated in the same or related class.
2. Relative Efficiency: Relative efficiency shall be expressed as the employee's most recent overall performance rating. Management may also consider the rating for each individual or institutional goal and value when overall performance ratings are equivalent, documented employee skills and ability to perform the remaining work required of class members after the implementation of the RIF, and any active disciplinary action(s) received by the employee.
3. Actual or Potential Adverse Impact: In accordance with federal guidelines affecting equal employment opportunity and affirmative action, all decisions concerning reduction-in-force must be analyzed to determine their impact on agency utilization goals based on race and sex to avoid adverse impact in violation of Section 4.d of the Uniform Guidelines on Employee Selection Procedures as applied to selection rates for separation through RIF.
4. Length of Service: Total state service determines length of service credit. In determining the length of service credit, an eligible veteran shall be accorded one year of state service for each year, or fraction thereof, of military service, up to a maximum of five (5) years of credit.

Reduction-In-Force Policy (cont.)

§ 4. Avoiding a RIF

A decision to implement a RIF must be reached only after the systematic consideration of actions designed to avoid the layoff. These actions may include but are not limited to the elimination of vacant positions; reduction in non-personnel related expenses; placement in a vacant position for which the employee qualifies; or retraining employees to facilitate placement in other positions at the agency or university.

§ 5. Office of Human Resources Responsibility

The responsibilities of the Office of State Human Resources (OSHR) shall include, but are not limited to the following:

1. Establishing the Reduction in Force (RIF) Plan Requirements and Program Guidelines to be followed by all agencies and universities to ensure commitment to, and accountability throughout, State Government;
2. Reviewing, approving and monitoring RIF plans and updates for agencies;
3. Providing technical assistance, training, oversight, monitoring, evaluation, and support to the RIF program; and
4. Developing, updating, and maintaining the RIF Priority Verification List database system.

§ 6. Agency or University Responsibility

The responsibilities of each Agency Head, Department Head and University Chancellor, or their designees, shall include:

1. Adhering to the RIF policy and programs that have been adopted by the State Human Resources Commission and approved by the Governor.
2. Agencies only: Submitting RIF plans and any necessary updates for approval by OSHR a minimum of one week prior to notifying employees of RIF actions; and
3. Universities only: Submit RIF plans and any necessary updates for approval by the President of the University System (or a Chancellor of a constituent institution, if delegated this power by the President of the University System) a minimum of one week prior to notifying employees of RIF actions. Submit approved RIF plans to OSHR for informational purposes within five (5) calendar days after approval.

Reduction-In-Force Policy (cont.)

4. Submitting employee information within thirty (30) days of RIF notification to OSHR to maintain the RIF Priority Verification List.

§ 7. Notification Requirement

The employing agency or university shall notify the employee in writing as soon as possible and in any case no fewer than thirty (30) calendar days prior to the effective date of separation. The written notification shall include the reasons for the reduction-in-force,

§ 8. Appeals

An employee separated through a reduction in force may appeal the separation only on the grounds listed in the applicable Employee Grievance Policy.

§ 9. Leave

Vacation Leave: Employees may request, subject to approval by management, to exhaust vacation leave and be paid in a lump sum for the balance not to exceed 240 hours. If an employee had over 240 hours of vacation leave at the time of their separation the excess leave shall be reinstated when reemployed within one year after separation.

Bonus Leave: Bonus leave will be paid in a lump sum if eligible.

Sick Leave: Employees separated due to reduction-in-force shall be informed that their sick leave shall be reinstated if employed in any agency or university within five years.

§ 10. Effective Date and Duration

This Policy is effective at the beginning of the day on October 7, 2021.

§ 11. Sources of Authority

- N.C.G.S. § 126-7.1
- 25 NCAC 01C .1004

Reduction-In-Force Policy (cont.)

§ 12. History of this Policy

Date	Version
July 28, 1949	First version
August 3, 1973	Established procedure for lay-off and demotion to effect reduction in force in the Employment Security Commission.
January 25, 1974	A permanent employee who is separated due to reduction in force shall have the right to appeal to the State Personnel Board for a review to assure that systematic procedures were applied equally and fairly.
January 1, 1976	Includes provisions for competitive service positions and provides that all reductions in force be based on systematic consideration of time of appointment, length of service, relative efficiency.
March 1, 1978	If an employee with five years of service is either transferred to an exempt position or occupies one that is declared exempt, upon leaving that position for reasons other than just cause, such employee shall have priority to any position that becomes available for which the employee is qualified. A permanent employee, who has been or is scheduled to be separated due to reduction in force, shall have priority to any position that becomes available for which the employee is qualified.
August 1, 1978	Reduction in force – priority consideration defined.
August 1, 1979	Severance pay equivalent to two weeks approved by 1979 GA.
March 4, 1981	Emergency regulation on reduction in force.
June 1, 1981	Revision in the wording of the policy to include “neither temporary, probationary nor trainee employees shall be retained in cases where permanent employees must be separated in the same or related classes.” AND that type of appointment, length of service and relative efficiency do not necessarily have to be considered in that order.

Reduction-In-Force Policy (cont.)

August 1, 1981	Policy changes due to Governor and Legislature requesting reduction in work force.
October 1, 1984	Amendments to AA Policy and RIF.
June 1, 1985	Deleted competitive service provisions.
July 1, 1985	Section on Appeals revised to conform to Legislation requiring years of service in certain pay grades before becoming a permanent employee.
February 1, 1987	Agency responsibility clarified (1) guideline must be openly available for review (2) must inform employees in writing of reasons of RIF, eligibility for priority, appeal rights, and other benefits (3) must give two weeks notice. Affirmative Action changed to state all decisions must be analyzed to determine impact on departmental utilization goals and to avoid adverse.
August 1, 1988	Reinstatement of sick leave changed to five years instead of three years.
November 1, 1990	Leave Without Pay Option deleted since no longer needed.
April 1, 1993	Priority Reemployment Consideration – revised to allow a new probation period in certain situations involving the reemployment of a person involved in reduction-in-force.
March 1, 1994	Changed “permanent” to “career.”
April 1, 1995	Note about veteran preference added for clarification.
December 1, 1995	Revised to conform to reduction-in-force statutory provisions.
June 1, 2008	Under the paragraph on Leave, added provision that leave in excess of 240 shall be reinstated if reemployed within one year. (This provision has been in the Reinstatement Policy since 2002. It is added here for clarity.) (2) Changed policy to allow an employee who is reduced in force to exhaust vacation leave after their last day of work and still be paid for up to 240 hours of leave in a lump sum.

Reduction-In-Force Policy (cont.)

January 1, 2009	A decision of the N.C. Court of Appeals said that an issue regarding the manner in which a reduction in force is carried out is no longer considered a contested case issue; therefore, the paragraph on Appeals is changed to recognize the impact of that decision. (The rule will be changed to reflect this change also.)
March 1, 2011	The paragraph on Appeals was changed (per Lynn Floyd) to include appeal if it is alleged that the separation is a denial of the veteran's preference granted in connection with a reduction in force. (This change is simultaneous with the publication of the new Manual; therefore, no revision was sent out separately.)
December 1, 2013	Section on "Appeals" changed to refer RIF employees to Employee Grievance Policy found in Section 7 of the HR Manual.
October 1, 2014	Changed trainee eligibility period from 6 months to 24 months to align with the legal definition of probationary period. Notification requirements were moved from "agency responsibility" and put in an independent section to place emphasis on the requirement. Removed the requirement for agencies to send applications of RIF employees to OSHR. Added a clarifying statement in the "leave" section that one year time period for reinstating excess leave is from the date of separation and not the date of notification of separation.
February 6, 2020	Policy reviewed by the Diversity and Workforce Services Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on February 6, 2020. North Carolina General Statute has been updated to reflect that no loss of funds shall be required as a precondition for a reduction in force (N.C.G.S. § 126-7.1 (b)). The policy revisions reflect this

Reduction-In-Force Policy (cont.)

	change, as well as adding some clarification regarding retention factors.
October 7, 2021	Policy reviewed by the Diversity and Workforce Services Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. The RIF policy was modified to reflect changes included in HB602 that allows the UNC System to approve RIF Plans.

Reduction-in-Force Priority Policy

Contents:

§ 1. Policy

Legislation provides an employment priority to career state employees, subject to the North Carolina Human Resources Act, who have been officially notified in writing of Reduction in Force (RIF) to enable a State employee to return to state service.

§ 2. Coverage

Employees with career status (as defined by N.C.G.S. § 126-1.1), who have received official written notification of imminent separation due to reduction in force, are eligible for priority consideration under the provisions outlined below.

An employee who is separated from a time-limited appointment is not eligible for priority unless the appointment extends beyond three years.

Reduction-in-Force Priority Policy (cont.)

§ 3. Relationship to Other Priorities

The priority for employees separated by reduction in force (RIF) and the priority for employees with less than 10 years of service subject to the NC Human Resources Act separated from exempt policy-making or exempt managerial positions are equal.

§ 4. Appeals

A career State employee, as defined in G.S. 126-1.1, with priority consideration who has reason to believe priority consideration was denied in a selection decision, shall appeal through the agency grievance procedure in accordance with G.S. 126-34.01.

§ 5. Period of Priority

An employee shall receive priority consideration for a period of 12 months from the date of the official written notification.

Employees who have priority status at the time of application for a vacant position and who apply during the designated agency recruitment period will be considered as priority applicants until the selection process is completed for that position.

Once an employee has been officially notified of separation by reduction in force, the employee's12-month period of priority begins. Agencies may, however, if funds are identified to continue employment for the employee, delay the separation date beyond the date originally stated in order to continue employment as long as funds are available. Regardless, the 12-month priority period begins from the date of initial notification of reduction in force.

§ 6. Priority Consideration

Within all State agencies, an employee officially notified of reduction in force shall receive priority consideration. If it is determined that an eligible employee and any other applicant have "substantially equal qualifications," then the eligible RIF employee must receive the job offer. However, the priority for employees separated by reduction in force (RIF) and the priority for employees with less than 10 years of service subject to the NC Human Resources Act separated from exempt policy-making or exempt managerial positions are equal.

Reduction-in-Force Priority Policy (cont.)

"Substantially equal qualifications" occur when the employer cannot make a reasonable 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.

The nature of the priority to be provided is as follows:

Employees in a permanent full-time position that are notified of reduction in force shall have priority consideration to permanent full-time and permanent part-time positions. Employees in a permanent part-time position that are notified of reduction in force shall have priority consideration to permanent part-time positions only.

§ 7. Grade to Grade

RIF applicants shall have priority for positions at the same salary grade or below as held at the time of official written notification.

§ 8. Grade to Band or Band to Grade

For RIF applicants applying for positions in a different classification system than their classification at the time of official written notification (i.e., from graded to career banded or vice versa), a salary grade equivalent will be assigned for each competency level within a career banded classification. Applicants shall have priority for positions at the same salary grade (or salary grade equivalency) or below.

§ 9. Band to Band

The salary grade equivalent should not be used when determining the RIF priority for a RIF applicant who was in a banded class at the time of notification and is applying for a position in a banded class. RIF applicants shall have priority for positions in the same banded classification at the same competency level or lower as that held at the time of notification, or for positions in a different banded classification with the same or lower journey market rate as that held at the time of notification.

Employees do not have priority consideration to exempt policymaking or exempt managerial positions.

Reduction-in-Force Priority Policy (cont.)

§ 10. RIF from Trainee Positions

For employees receiving notification of imminent separation from trainee positions, who are eligible for priority consideration, the salary grade for which priority is to be afforded is the salary grade of the full class.

§ 11. RIF from Flat Rate Positions

For employees receiving notification of imminent separation from flat-rate positions, who are eligible for priority consideration, the salary grade for which priority is to be afforded is the salary grade which has as its maximum a rate nearest to the flat rate salary of the eligible employee.

§ 12. Priority for Retiring Employees

An employee who, after receiving official written notice of imminent reduction in force, retires or applies for retirement prior to the separation date waives the right to priority.

§ 13. Priority for Employees Currently Possessing Priority

An employee notified 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), of the position held at the most recent notification of separation and expires 12 months from the most recent notification of separation and shall expire 12 months from the most recent notification date.

§ 14. Salary Requirements

The salary paid to a RIF applicant shall be calculated according to the salary administration policies. A RIF applicant shall not be paid a salary higher than the maximum of the salary grade (or banded salary range) of the position accepted.

§ 15. Probationary Period

An employee with reduction in force priority status is required to serve a new probationary period when there is a break in service.

Reduction-in-Force Priority Policy (cont.)

§ 16. Termination of RIF Priority Consideration

Priority consideration for an eligible employee is terminated when:

- an employee applies for a position but declines an interview or offer of the position if the position is at a salary grade (or salary grade equivalency) or salary rate equal to or greater than that held at the time of notification; or
- an employee accepts a position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation; or
- If an employee accepts a permanent or time-limited position with the State at the same salary grade (salary grade equivalency) or higher than the position held at the time of notification of separation; or
- 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, or
- an employee accepts a career banded position in a different banded classification with the same or higher journey market rate than held at the time of notification; or
- an employee with priority status 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; or
- an employee has received 12 months priority, consideration; or
- an employee applies for retirement or retires from State employment.

Priority reemployment consideration is not terminated when an eligible employee is placed prior to the separation date due to reduction in force, if the position is at a lower salary grade (or salary grade equivalency) or salary rate less than that held at the time of notification, and if the position is at the same appointment status.

§ 17. Effect on Priority if Lower Level Position and Lower Salary Rate Accepted

When an employee applies for and accepts a permanent or time-limited position with a lower salary grade (or salary grade equivalency) and salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) up to and including that held at the time of the notification of separation.

Reduction-in-Force Priority Policy (cont.)

§ 18. RIF Priority Consideration and Other Employment

An employee may accept the following employment and retain priority consideration throughout the 12-month priority period:

- employment outside State government,
- a State position not subject to the NC Human Resources Act,
- a temporary position, or
- a contractual arrangement (see Advisory Note).

Any employee separated from State government and currently receiving severance wages shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of the UNC System and the constituent institutions of the North Carolina Community College System, until 12 months have elapsed since the separation as provided by N.C.G.S. § 126-8.5.

§ 19. Notification to the Office of State Human Resources

State agencies shall notify the Office of State Human Resources when employees are officially notified in writing of the reduction in force. Also, state agencies shall notify the Office of State Human Resources when a RIF applicant is hired and when their priority is satisfied or terminated. Timely notification to the Office of State Human Resources is required to ensure the Priority Verification List is accurate. The Priority Verification List is a tool for agency HR staff to quickly assess priority status of applicants.

§ 20. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-1.1; 126-4(6), (10); 126-7.1

It is compliant with the Administrative Code rules at:

- 25 NCAC 01H .0901; 25 NCAC 01H .0902; 25 NCAC 01H .0903; 25 NCAC 01H .0904; 25 NCAC 01H .0905

Reduction-in-Force Priority Policy (cont.)

§ 21. History of This Policy

Date	Version
September 17 1997	• First version.
March 1, 2007	• Added requirement that employee must have career status in order to receive priority consideration • Changed the way priority is determined for employees in flat rate positions • Added “salary grade equivalency” to accommodate career banded classes. • Added requirement that employees must complete an official State application within 30 days and for the separating agency to forward to OSP in order to retain priority.
July 1, 2007	• Added requirements for career banded classes.
December 1, 2007	• Adds the following requirements that were inadvertently omitted from the previous revision: • If an employee wishes to receive priority consideration, the employee must file a completed state application with the employee's agency within 30 days of receipt of written notification of separation. • It is the agency's responsibility to submit such an employee's completed state application to the Office of State Personnel. • If the employee does not want assistance in finding another State job, the agency shall obtain a written statement from the employee to that effect, and provide a copy to the Office of State Personnel.
December 1, 2007	• The 2011 Legislature amended the Reduction in Force priority afforded to SPA employees in House Bill 22 (Technical Corrections Act). The new Reduction in Force priority applies to employees notified of RIF as of July 1, 2011 or later. As a result, we have two sets of policies and rules in effect at the same time related to RIF priority. The policy in place prior to the legislative

Reduction-in-Force Priority Policy (cont.)

	change will remain in place until June 30, 2013 and will be re-titled "Reduction-In-Force Priority (for employees notified prior to 7/01/2011)". Policies and rules pertaining to employees notified 7/01/2011 and later are pending approval by the State Personnel Commission.
July 1, 2011	• The 2011 Legislature amended the Reduction in Force priority afforded to SPA employees in House Bill 22 (Technical Corrections Act). The new Reduction in Force priority applies to employees notified of RIF as of July 1, 2011 or later. As a result, we have two sets of policies and rules in effect at the same time related to RIF priority. The policy in place prior to the legislative change will remain in place until June 30, 2013 and will be re-titled "Reduction-In-Force Priority (for employees notified prior to 7/01/2011)". Policies and rules pertaining to employees notified 7/01/2011 and later are pending approval by the State Personnel Commission.
July 1, 2012	Policy reflects changes enacted by the legislature during the 2011 session for employees notified of RIF as of July 1, 2011 or later. Since the previous policy will remain in effect until June 30, 2013, this amended policy will be titled "Reduction-In-Force Priority (for employees 7/01/2011 or After". The amended policy maintains 12 months priority period; does not have a mandated salary requirement; does not provide for any particular salary grade/salary grade equivalency; provides that if a RIF candidate has substantially equal qualifications to any other candidate (internal to state government or external), then the RIF candidate shall be hired; priority is satisfied if an employee is offered or accepts a permanent position at any level or salary, including a lower salary and/or lower salary grade/salary grade equivalency.
November 1, 2013	Policy replaces two RIF policies (one for employees RIF prior to July 1, 2011 and one for employees RIF effective July 1, 2011 or later.

Reduction-in-Force Priority Policy (cont.)

	HB 834 resulted in changes to N.C.G.S. § 126 (State Human Resources Act) which changed some of the conditions under which an employee with RIF Priority has the priority satisfied or terminated. • Priority is now satisfied if the employee accepts a position at the same position level or above or at the same salary rate or above of the position held at the time of RIF notification. • If an agency places an employee notified of separation into a position within 35 miles of the employee's original work station, the employee does not lose priority if the position is at a lower salary grade or rate less than that held at time of notification. • An employee with priority status is required to serve a new probationary period when there is a break in service.
October 1, 2014	• Removed "Official Notification Requirements" section. This is covered in RIF policy. • "Satisfaction of RIF Priority" section was removed and text merged with "Termination of RIF Priority" section. • Added clarification about band to band priority in the "Termination of RIF Priority" section.
December 3, 2020	• Policy reviewed by the Diversity and Workforce Services Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on February 6, 2020.

Reinstatement Policy

Contents:

§ 1. Definition

Reinstatement is the return to state employment from an extended leave of absence or after a break in service from a state agency. Employees who reinstate must possess at least the minimum requirements or their equivalent, as set forth in the class specification of the position to which reinstated. If reinstatement is from leave without pay, the employee is automatically qualified provided employment is in the same classification or in a lower class in the same field of work.

§ 2. Salary Rate - Return from Extended Leave of Absence

The employee's salary shall be based on the last salary plus any general salary increase due while on extended leave of absence.

§ 3. Salary Rate – Return from Break in Service

When a separated employee returns to state employment after a break in service, salary must be set based upon application of all pay factors in accordance with the New Hire Salary policy. Reinstatements within one year to the same grade and/or classification may not warrant an increase.

§ 4. Effective Date

A reinstatement may be made effective on any scheduled workday in the pay period. When the first day of a pay period falls on a nonworkday and the employee begins work on the first workday, the date to begin work shall be shown as the first day of the pay period. However, if the position requires work on such days, the date shall be the day the employee actually begins work.

Reinstatement Policy (cont.)

§ 5. **Sources of Authority**

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish policies governing "[c]ompensation plans."
- N.C.G.S. § 126-4(4) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish "[r]ecruitment programs designed to promote public employment, … attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions."
- N.C.G.S. § 126-4(5) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish policies governing leave "and other matters pertaining to the conditions of employment."
- N.C.G.S. § 126-4(10) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish "[p]rograms of employee assistance, … safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration."

§ 6. **History of This Policy**

Date	Version
July 28, 1949	First version: Policy established that employees separated from State service through no fault of their own would retain accumulated sick leave if reemployed by the State within 1 year from the time of separation.
July 6, 1950	Reinstatement to same class - may pay at rate receiving at time of termination or in accordance with new hires.
September 18, 1953	Revision of reinstatement policy - may be reinstated within 5 years and spelled out how salary can be set if same class, higher class, lower class.

Reinstatement Policy (cont.)

December 15, 1969	If a former employee is re-employed before the date through which annual leave was paid, the payment for unused annual leave shall not be considered as dual compensation.
July 1, 1970	Break in service changed to 31 calendar days from last day of work. Reinstatement of an employee before terminal leave ends is not considered as dual compensation.
December 17, 1970	Sick leave accrued shall be credited or reinstated within one year from date of separation due to reduction in force, authorized leave without pay or while drawing workmen's compensation. If employee is separated for other reasons and is reinstated within one year the employing agency may consider reinstatement of sick leave credits.
January 1, 1976	Revised policy to provide that a State agency may consider reinstating sick leave credits for employees who separated from a subject local government position within one year. Changes time period for eligibility for reinstatement to provide consistency between competitive and non-competitive positions. Added provision for reinstatement under competitive service based on reinstatement rights in other governmental jurisdictions.
July 1, 1977	Redefines reinstatement to include the return to a non-exempt position of an employee who transferred to or occupied a position designated as exempt.
October 1, 1978	Reinstatement option for reemployment of a former state employee. An agency has option of either reinstatement (if employee is eligible) or a probationary appointment to a former State employee being considered for new appointment.
December 1, 1978	Probationary Period Options. Offers the option of either a probationary or permanent appointment upon reinstatement.
May 1, 1979	Employees separated because of a reduction in force shall be credited with accrued sick leave if reinstated within one year, and may receive such credit up to three years following separation.

Reinstatement Policy (cont.)

January 1, 1980	Adds employees of public school, community and technical colleges.
January 1, 1983	Made it mandatory to reinstate sick leave when an employee returns to State service after three years.
December 1, 1985	Competitive Service provisions deleted.
August 1, 1988	Definition of reinstatement changed to 5 years. Reinstatement of sick leave changed from 3 to 5 years.
January 1, 1989	Pay status changed to half the workdays and holidays.
March 1, 1992	In order to avoid abuses and to close a loophole in policy, policy is changed to require that an employee be away from State employment for at least a year before using the New Appointments Policy for setting salaries. If reinstated within one year, the salary would be set by adjusting the previous salary by the amount of any across-theboard increases and then applying the appropriate policies, i.e., promotion, demotion, etc. A provisions is included that would allow for a higher salary if intervening employment justifies it.
April 1, 1993	RIF person reinstated may be required to serve a probationary period in certain situations.
August 1, 1995	Changed the terminology in other policies to “permanent, probationary, trainee appointment” rather than “permanent, probationary, trainee employment.” In addition, “time-limited” appointment has been spelled out in the appropriate policies, whereas, in the past, this type of appointment was considered to be a type of “permanent” appointment.
December 1, 1995	Revised to include salary requirements of a RIF employee with priority reemployment consideration.
July 1, 2002	1. Statement added to “Benefits Reinstated” to clarify that a RIF employee may reinstate excess vacation leave when reemployed within one year. 2. Statement revised to clarify retirement credit for military service.

Reinstatement Policy (cont.)

November 1, 2013	HB 834 – Modernization of the Human Resources Act change G.S. 126 to include a new definition for probationary period. The period changed from three to nine months to a consistent twenty-four months of continuous SHR employment in a permanent position. Any employee who has a break in service, must serve a new probationary period. For periods of leave with or without pay, credit toward the probationary period now continues instead of stopping.
January 1, 2013	?
January 1, 2016	?

Rewards and Recognition Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina to encourage all state agencies to establish an employee rewards and recognition program as a means of recognizing performance achievements. An employee rewards and recognition program serves as an important element in the overall strategic effort to build and sustain a performance culture in North Carolina state government.

State government has long recognized that all employees do not perform at the same level. High-performance employees contribute more to the agency's success than employees performing at lower performance levels. The fact that some employees consistently contribute more to the agency's success in reaching its business objectives receives serious attention in a performance culture. An effective rewards and recognition program serves as an important tool for motivating, developing and retaining a high performance workforce.

§ 2. Office of State Human Resources Responsibilities

The Office of State Personnel will provide guidance to agencies in the design, development and implementation of a customized rewards and recognition program by providing the following services and tools:

- Comprehensive website with tools, inventory of techniques, references, guidelines, funding options, metrics for program evaluation and other materials;
- Consultation services for recognition coordinators; and
- A statewide Employee Rewards and Recognition Program.

§ 3. Agency Responsibilities

Agencies that choose to develop a rewards and recognition program should consider the following activities:

Rewards and Recognition Policy

- Seek the involvement and endorsement of organizational leadership;
- Designate a rewards and recognition coordinator who will champion, organize and lead the initiative, as well as serve as the coordinator for statewide employee recognition programs;
- Engage work teams to help identify the most effective rewards and recognition elements for the agency;
- Provide instruction for managers and supervisors about the rewards and recognition program and its relationship to performance management;
- Adopt a rewards and recognition program that best meets the needs of the agency; and
- Partner with the Office of State Human Resources to develop a statewide rewards and recognition report by providing information on activities and results.

§ 4. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(15)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01C .0900

§ 5. History of This Policy

Date	Version
July 1, 2007	• New Policy
June 4, 2020	• Policy reviewed by the Recruitment Division to confirm alignment wi current practices and by the Legal, Commission, and Policy Divisior confirm alignment with statutory, rule(s), and other policies. No sub changes. Reported to SHRC on June 4, 2020. • General editorial changes to text, grammar, and language. All char were minor wording and format changes for clarification.

Secondary Employment Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina that any employee who holds a full time position with the state shall consider the state employment responsibilities as primary. Any employment outside of the primary state position is considered secondary employment.

The secondary employment cannot have an adverse effect on or create a conflict of interest with the primary employment. An employee shall obtain approval from the agency head or designee before engaging in any secondary employment.

These provisions for secondary employment apply to all employment not covered by the policy on Dual Employment.

§ 2. Definitions

Secondary Employment: any activity involving the production or sale of goods, the provision of services, the performance of intellectual or creative work for pay in either an employer/employee relationship or in a self-employment capacity such as an independent contractor.

Full Time Employment: an employee who works 40 hours or more.

§ 3. Agency Responsibility

1. Secondary employment shall not be permitted when it would:

- create either directly or indirectly a conflict of interest with the primary employment.
- impair in any way the employee's ability to perform all expected duties, to make decisions and carry out in an objective fashion the responsibilities of the employee's position.

Secondary Employment Policy (cont.)

2. If the secondary employment has any impact or may create any possibility of conflict with State operations, the form must be approved by the State Human Resources Director in conjunction with the State Board of Ethics.
3. The employee shall have approval of the agency head, or designee, before beginning any secondary employment. Approval of secondary employment may be withdrawn at any time if it is determined that secondary employment has an adverse impact on primary employment.
4. Each agency shall establish its own specific criteria, not inconsistent with this policy, for approval and tracking of secondary employment based on work situation needs.
5. Each agency shall use a Secondary Employment Form that will be kept in the employee's personnel file that is consistent with the model provided by the Office of State Human Resources.
6. The agency shall notify all new employees of the provisions of the Secondary Employment Policy at the time of job offer.
7. The agency shall send out a notification to all employees annually of the provisions and requirements of the Secondary Employment Policy.

§ 4. Employee Responsibility

It is the responsibility of the employee prior to starting secondary employment:

- to complete a Secondary Employment Form for all employment that is not covered by Dual Employment, and

It also is the responsibility of the employee:

- to update the form annually
- to notify their supervisor and submit a new form when any changes occur to their secondary employment.

§ 5. Sources of Authority

- N.C.G.S. § 126-4
- 25 NCAC 01C .0700

Secondary Employment Policy (cont.)

§ 6. History of This Policy

Date	Version
August 1, 1978	• Policy adopted on secondary employment.
September 1, 2002	• Advisory note added to clarify that each agency may establish criter approval of secondary employment.
January 1, 2004	• Repeal the section that states that secondary employment forms are confidential information. The Privacy of Personnel Records statute provides that records are public unless specifically exempt. The secondary employment forms are not included in the definition of public records and, therefore, are not exempt from public disclosure. • Require approval of the State Personnel Director in conjunction with the Board of Ethics if there is a possible conflict with State Operations.
October 1, 2020	• Policy reviewed by the Recruitment Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on December 3, 2020. • General editorial changes to text, grammar, and language. All changes were minor wording and format changes for clarification.

Selection of Applicants Policy

Contents:

§ 1. Policy

All agencies shall select from the pool of most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence.

Definition: Political affiliation & political influence: For the purposes of this policy, political affiliation is the membership in, participation in, or support of, a particular political party, group, or candidate. Political influence occurs when political affiliation impacts the decision to hire or not to hire and the selection decision was not based on fair and valid selection criteria

The selection of applicants for vacant positions shall be based upon a relative consideration of their qualifications for the position to be filled. Using fair and valid selection criteria, the agency shall review the credentials of each applicant and determine who possesses the minimum qualifications. From those applicants who meet the minimum qualifications, a pool of most qualified candidates shall be identified. The pool of the most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants. The individual selected for the position must be chosen from the pool of most qualified applicants.

Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled. The Office of State Human Resources will

Selection of Applicants Policy (cont.)

provide technical assistance, upon request, to agencies wishing to design or review selection procedures.

§ 2. Written Notification to Applicants

After making the selection decision, the agency shall provide timely written notice of non- selection to all unsuccessful candidates in the most qualified pool. In making the selection determination of minimally qualified and most qualified, policies regarding priority consideration must be applied. (See Section 7. Special Employment and Reemployment Considerations, in this policy.) As a best practice, and not as a requirement:

- Recruiters should seek to provide notice to applicants who did not meet the minimum qualifications within five business days of determination.
- Hiring managers/recruiters should provide notice to those applicants who were not selected, but who were determined to be qualified, no later than five business days after the selected applicant begins service in the position.

This enables qualified candidates to remain eligible for consideration in situations where the selected candidate does not accept/start the position.

§ 3. Appeals

A State employee or applicant for State employment who believes that he or she was denied selection because of harassment, discrimination or retaliation may appeal first through the informal EEO inquiry process and then through the agency grievance procedure.

A career State employee who believes he or she was denied priority consideration as a State employee for promotion may appeal through the agency grievance procedure.

A State employee or applicant for State employment who believes that he or she was denied a reduction in force priority in violation of law may appeal through the agency grievance procedure.

§ 4. Applicant Information

Applicants must furnish true, accurate, and complete information and documentation. When an agency discovers that an applicant provided false or misleading information on a State application, or its equivalent, the following shall occur:

Selection of Applicants Policy (cont.)

(1) When an agency discovers, prior to employment, that an applicant provided false or misleading information in order to meet position qualifications, the applicant shall be disqualified from consideration for the position in question.

(2) When an agency discovers, after employment, that an employee provided false or misleading information or concealed employment history or other required information significantly related to job responsibilities, but not used to meet minimum qualifications, disciplinary action is required and shall be administered in accordance with the following criteria:

- Disciplinary action, up to and including dismissal, shall be taken, but the severity of such action shall be at the discretion of the agency head.
- The agency head's decision, while discretionary, shall consider: the effect of the false, misleading or concealed information on the hiring decision, the advantage gained by the employee over other applicants, the effect of the false information on the starting salary, and the advantage gained by employee in subsequent promotion and salary increases. Job performance shall not be considered in such cases, nor can decisions be made on the basis of race, creed, color, religion, national origin, sex, age, disability or political affiliation.

(3) When an agency discovers that an employee was selected based on false or misleading work experience, education, registration, licensure or certification information in order to meet position qualifications, the employee shall be dismissed, regardless of length of service.

§ 5. Verification of Credentials

The employing agency shall verify dates of employment and complete references prior to extending an offer of employment. See *Applicant Reference Checks policy.*

The employing agency shall verify the validity of academic and professional credentials within 90 days from the date of the employee's initial employment. The agency shall inform applicants in writing at the time of selection that credentials must be verified within 90 days of initial employment and prior to the granting of a permanent or time-limited permanent appointment. If false or misleading information is discovered, then action shall be taken as listed above in Section 4.

Selection of Applicants Policy (cont.)

Credentials that are required to be verified are (1) the highest post-secondary degree that is used to qualify or set the salary and (2) any registrations, licenses, or certifications that are used to qualify or set the salary, and all work history that are is used to qualify or set the salary of an applicant.

§ 6. Employment Limitations

§ 6.1. Age Limitations

The Fair Labor Standards Act sets 14 as the minimum age for most non-agricultural types of work but limits the number of hours that may be worked for minors under age 16. It also prohibits minors under age 18 from working in any occupation that is deemed to be hazardous. Agencies should review the Child Labor provisions in the FLSA if questions of minimum age arise. (Website: http://www.dol.gov/dol/topic/youthlabor/agerequirements.htm)

Advisory Note: North Carolina State government is not subject to the North Carolina Department of Labor laws and, therefore, does not require an Employment Certificate as issued by the Department of Social Services.

Law Enforcement Officers must be at least 20 years of age.

Maximum Age - There is no maximum age for employment.

§ 6.2. Employment of Relatives (Nepotism)

Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. This includes employment on a permanent, temporary, or contractual basis.

The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Paragraph.

It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires

Selection of Applicants Policy (cont.)

influence over the other's employment, promotion, salary administration or other related management or personnel considerations.

§ 6.3. Employment of Aliens

The State is permitted to hire only properly identified U.S. citizens and aliens with proper work authorization from the Department of Homeland Security, Bureau of U.S. Citizenship and Immigration Services. *See Immigration/Employment of Foreign Nationals Policy.*

§ 6.4. Federal Military Selective Service Act

State law requires selected applicants to indicate if they are in compliance with the Federal Military Selective Service Act. Failure to comply with the registration requirements bars a person from State employment.

§ 7. Special Employment and Reemployment Consideration Priorities

Priority for vacant positions shall be given to:

- Employees separated from exempt policy-making/confidential positions or exempt managerial positions for reasons other than just cause (*See Priority Reemployment for Exempt Policy-Making/Confidential and Exempt Managerial Employees*);
- Employees notified of or separated by reduction in force (*See Reduction in Force Priority Policy*);
- Employees returning from workers' compensation leave (*See Workers' Compensation Policy*);
- Career State employees seeking promotions (See **Promotional Priority Policy**); and
- Eligible veterans and National Guard members (See **Veterans' and National Guard Preference Policy**).

The Office of State Human Resources maintains a list of reduction-in-force priority status employees. The agency shall be responsible for assuring that these priorities, as well as the other priorities, are appropriately administered. If priority reemployment applicants are available, the appropriate priority must be afforded.

Selection of Applicants Policy (cont.)

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(3), (6); 126-14.2, 126-14.3; 126-14.4; 126-15; 126-15.1; 126-30

It is compliant with the Administrative Code rules at:

- 25 NCAC 01H .0634-.0640

§ 9. History of This Policy

Date	Version
July 28, 1949	New Employment of Relatives Policy
October 28, 1949	Added to the list of members considered immediate family.
August 4, 1967	Revised policy on Employment of Relatives to allow relatives to be considered under certain conditions.
March 23, 1973	Revised policy on Employment of Relatives – expanded on list of relatives and included that the degree of closeness of relationship of these listed or other relatives must be considered.
January 1, 1980	Gave reduction in force persons priority to any available position for which qualified; except they have second priority status after a career employee who meets certain eligibility requirements.
March 1, 1980	Revised policy on Employment of Relatives – added to immediate family half relationships.
June 1, 1985	Changed priority reemployment to include employees separated from policy-making exempt positions.
December 1, 1985	New Selection Policy.
June 1, 1986	Policy on Veterans' Preference Revised.
October 1, 1987	Policy on employment of aliens revised to comply with Immigration. Reform and Control Act. Policy on Veterans' Preference Revised.
January 1, 1988	New policy on Verification of Credentials.
November 1, 1988	Statutory reference to Veterans' Preference points deleted.
January 1, 1990	Priority reemployment – deleted reference to steps to conform to new pay plan.

Selection of Applicants Policy (cont.)

March 1, 1991	Priority reemployment – extended eligibility for priority reemployment to employees who have completed 6 months or more of training and to employees who attained permanent status prior to entering a trainee appointment.
September 1, 1991	Revised procedures for verification of credentials.
June 1, 1992	Priority reemployment – revised to include statutory provisions for priority reemployment when notified of RIF.
March 1, 1994	Changed “permanent” to “career.”
April 1, 1994	Priority reemployment – revised to change “permanent” to “career” to conform to N.C.G.S.§ 162-1A.
December 1, 1995	Added provision required by statute that employee with 10 years of service receive priority over a State employee having less than 10 years.
September 17, 1997	Revised to implement provisions of SB 886 (nonpolitical selection of the most qualified).
July 1, 2001	Revised to correct the statute reference under Age Limitations.
August 1, 2004	Revised to correct the minimum age requirement.
August 1, 2006	Revised minimum age for Law Enforcement Officers from 21 years to 20 years.
March 1, 2007	(1) Added policy statement and (2) Clarified that employee is to be dismissed immediately upon discovery that employee provided false information on the application in order to meet qualifications.
September 1, 2007	Information under paragraph on Employment of Aliens deleted. This has been revised and incorporated into a new policy “Immigration/Employment of Foreign Nations.”
January 1, 2007	HB834 changed the appeals process for State employees; therefore, the section on Compliant Contested Case Procedures is being removed and a new Appeals section is being added. The appeals section of the policy now states that claims regarding selection must go through the agency grievance procedures.
February 2, 2017	Change the Selection policy to align with 25 NCAC 01H .0641, "Employment of Relatives" by adding "this includes employment on

Selection of Applicants Policy (cont.)

	a permanent, temporary, or contractual basis" to the policy to provide consistency when hiring applicants within the NC State government.
July 1, 2017	Change the Selection policy from a requirement to hire from the "most qualified pool of applicants" to a requirement to hire from among the "qualified pool of applicants."
January 25, 2018	Change the Selection policy to align with N.C.G.S. § 126-14.2 which changed effective July 1, 2017, from a requirement to hire from the "qualified pool of applicants" to a requirement to hire from among the "most qualified pool of applicants." Change 3 mentions of "qualified" to "most qualified" within the policy. Change the language in the policy to clarify the meaning of "most qualified."
July 14, 2022	Added best practices about when to provide notice to applicants who were not selected. Clarified "verification of credentials" section to make clear which parts of the application are verified by the employing agency, and to make clear that if false or misleading information is discovered in an application, action shall be taken. Added National Guard priority, to match the addition of that priority already made in the Veterans' and National Guard Preference Policy pursuant to the 2021 Appropriations Act. Removed reference to repealed statutes/codes.
July 11, 2024	Section 5. Verification of Credentials was rewritten to make clear that the highest post-secondary degree that must be verified is the one used to qualify or set the salary.

Separation Policy

Contents:

§ 1. Policy

Separation from State service occurs when an employee leaves payroll for a reason listed below. (Policies stated below, except for leave policies, do not apply to employees described in “Appointment Ended.”)

§ 2. Resignation

An employee may voluntarily terminate services with the State by submitting a resignation to the appointing authority. Normally, it is expected that an employee will give written notification at least two weeks’ prior to the last day of work. When the employee resigns verbally, the agency shall request written confirmation. If the agency does not receive written confirmation of the verbal resignation from the separating employee, the appointing authority who received the verbal resignation shall document it in writing, including the date the employee’s resignation is to be effective and retain the document the separating employee’s personnel file. The appointing authority, or their designee, should provide written confirmation of receipt and acceptance of the employee’s verbal or written resignation to the separating employee.

Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave; it shall be reinstated if the employee returns to State service within five years or it may be applied toward

Separation Policy (cont.)

retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

Such separation is voluntary and creates no right of grievance or appeal.

§ 3. Voluntary Resignation without Notice

An employee who is absent from work and does not contact the employer for three consecutive scheduled workdays may be separated from employment as a voluntary resignation. A factor to consider when determining if the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact the employer.

Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave; rather, it shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

Such separation is voluntary and creates no right of grievance or appeal.

§ 4. Separation due to Unavailability

An employee may be separated when the employee and agency are unable to reach a return-to-work arrangement that meets both the needs of the agency and the employee's condition 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 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; or

(2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable to return to all 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 the employee unable to perform the position's essential duties as set forth in the employee's job description or designated work schedule; or

Separation Policy (cont.)

(3) notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is on workers' compensation leave of absence, and the employee is unable to return to all 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, a separation may occur on the earliest of the following dates:

(i) 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

(ii) 12 months after the date of the employee's work-related injury.

"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.

§ 5. Procedure for Separation due to Unavailability

1. "Pre-Separation Letter"

An agency must send the employee written notice of proposed separation in a Pre-Separation Letter at least 15 calendar days prior to the agency's planned date of separation. The letter must include:

a. Planned date of separation; and
b. Efforts undertaken to avoid separation; and
c. Why efforts were unsuccessful; and
d. Deadline for employee to respond in writing no less than 5 calendar days prior to agency's planned date of separation.

2. "Letter of Separation"

If the agency and employee are unable to agree on terms of continued employment or if the employee does not respond to the Pre-Separation letter, an agency must then send the employee written notice of separation in a Letter of Separation no earlier than 20 calendar days after the Pre Separation letter was sent to the employee. The letter must include:

a. Actual date of separation; and
b. Specific reasons for separation; and

Separation Policy (cont.)

c. Employee's right of appeal.

It is advisable for agency human resources staff to confer with agency legal counsel regarding customized, appropriate content of the Pre-Separation Letter and Letter of Separation.

It is recommended, but not required, for the agency to send the "Pre-Separation Letter" and "Letter of Separation" via certified mail. An agency may also wish to send such letters via other means, such as e-mail, first class U.S. mail, or Federal Express, in addition to certified mail. Agencies should confer with their legal counsel on when a letter sent by multiple modes of transmission would be considered received by the employee.

§ 6. Leave Payout Upon Separation due to Unavailability

When an employee is separated for reasons other than a work-related injury, unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave; rather, it shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

When an employee is separated due to a work-related injury, leave shall be paid in a lump sum as follows:

(1) Payment of unused vacation and eligible unused bonus leave already earned as of the date of injury;

(2) Payment of unused vacation and sick leave accumulated only during the first 12 months of workers' compensation leave; and

(3) Payment of any eligible unused bonus leave granted on or after the date of injury.

If the employee returns to permanent duty after workers' compensation leave, vacation leave remains available for use after returning to work until the end of the calendar year, at which time any excess vacation leave over 240 hours shall be converted to sick leave. If the employee separates for any reason during the calendar year in which they returned to work after workers' compensation leave, the employee shall be paid a lump sum for unused leave as follows:

(1) Payment of unused vacation and eligible unused bonus leave already earned as of the date of injury;

Separation Policy (cont.)

(2) Payment for unused vacation leave accumulated during the first 12 months of workers' compensation leave; and

(3) Payment of any eligible unused bonus leave granted on or after the date of injury.

Payment shall not be made for unused sick leave; rather, it shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

§ 7. Grievance or Appeal of Separation

An employee may grieve or appeal a separation due to unavailability. Such a separation shall not be considered a disciplinary dismissal as described in N.C.G.S. § 126-34.02 or N.C.G.S. § 126-35. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in N.C.G.S. § 126-34.02 or N.C.G.S. § 126-35. Rather, the agency's burden shall be to prove that the employee was unavailable.[1]

§ 8. Retirement

An employee may retire when the employee is eligible and applies for retirement benefits from the Teachers' and State Employees' Retirement System (TSERS), from the Law Enforcement Officers' Benefit and Retirement Fund, or the University Optional Retirement Program.

Unused vacation, or any portion, may be exhausted prior to the date of separation, and the remainder (not to exceed 240 hours) along with eligible unused bonus leave will be paid in a lump sum. Unused sick leave may be applied toward retirement, if applicable under the employee's retirement plan.

§ 9. Reduction in Force

An employee may be reduced in force for reasons of shortage of funds or work, abolishment of a position, or other material changes in duties or organization. Employees may elect, subject to approval by management, to exhaust vacation leave after their last day of work and be paid in a lump sum for the balance not to exceed 240 hours (plus eligible

Separation Policy (cont.)

unused bonus leave). If an employee had over 240 hours of vacation leave at the time of reduction in force, the excess leave shall be reinstated if reemployed within one year.

Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

§ 10. Dismissal

Dismissal is involuntary separation for just cause in accordance with the provisions of the Disciplinary Action policy.

Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum.

Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

§ 11. Appointment Ended

An "Appointment Ended" separation occurs when an employee is terminated for reasons other than just cause from one of the following positions:

- exempt policymaking or exempt managerial positions designated pursuant to N.C.G.S. § 126-5(d),
- confidential assistants and secretaries,
- chief deputy or chief administrative assistant, or
- other positions designated as exempt from the just cause provisions of the State Human Resources Act.

These separations may occur whenever the Agency Head or the Governor determines that the services of the employee are no longer needed. Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

Advisory Note: The Division of Employment Security (DES) has ruled that these employees are eligible for unemployment benefits. If the employee voluntarily

Separation Policy (cont.)

resigns before the date the appointment ends, it will be called a "Resignation" and will be subject to DES regulations dealing with voluntary separations.

§ 12. Death

Payment for unpaid salary, unused vacation leave (not to exceed 240 hours plus eligible unused bonus leave), and reimbursable travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made to the Clerk of Superior Court of the county of the deceased employee's residence. Payment shall not be made for unused sick leave.

§ 13. Separation Procedures

The last day of work or the day of death shall be the date separated, except in the following cases:

(1) If an employee is exhausting vacation leave prior to retirement or reduction in force, the date separated shall be the ending date of leave.

(2) If an employee is exhausting approved sick/vacation leave for medical reasons and resigns or dies before returning to work, the date separated shall be the date the employee resigns or dies. This is subject to the approval of the Agency HR office.

(3) If an employee gives notice of a resignation and becomes ill, the employee may exhaust sick/vacation leave up until the date of the resignation. The date separated will be the date of resignation. This is subject to the approval of the Agency HR office.

It is important to know the correct reason for resignation or dismissal. For example, if an employee resigns for other employment, the reason should include (if known) whether the employee left for a higher salary, or other pertinent facts that led to the employee's decision to leave.

See the Compensatory Time Policy for additional guidance on the use of compensatory time prior to a known separation of an FLSA Not Subject employee.

Separation Policy (cont.)

§ 14. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(7a) authorizes the State Human Resources Commission to create policies governing the separation of employees.
- N.C.G.S. § 126-34.02, which states the burden of proof for separation grievances.

It is compliant with the Administrative Code rules at:

- 25 NCAC 01C .1001 *et seq.*

§ 15. History of This Policy

Date	Version
October 1, 1953	First version. Adoption of policy for terminal leave which states that employees cease to earn leave, be entitled to holidays and cease to be eligible for salary increments or promotions.
July 1, 1977	Provides that separation policies, except for leave provisions, do not apply to employees in positions designated exempt.
November 1, 1989	Policy on Involuntary Resignation Without Notice added. Policy on Separation Due to Unavailability When Leave is Exhausted added.
September 1, 1991	Dismissal policy revised.
March 1, 1996	Definition of “Appointment Ended” added.
March 1, 2003	Advisory Note added: “Applicable leave credits” means leave requested by the employee and approved by the supervisor. In cases of illness, it means sick and/or vacation leave (or any portion) which the employee chose to exhaust prior to going on leave without pay. If there is a vacation leave balance at the time of separation, it shall be paid in a lump sum.
June 1, 2003	Clarified Separation Due to Unavailability by defining applicable leave credits and by explaining how to pay out leave balances.
September 1, 2004	Voluntary Resignation Without Notice changed to incorporate rule change.
January 1, 2007	Changed wording of “Unavailability When Leave is Exhausted” to eliminate confusion with the ADA.

Separation Policy (cont.)

October 1, 2008	Revised to allow a RIF employee to exhaust excess vacation leave. Clarified Separation Procedures.
November 1, 2013	Change definition of “Separation Due to Unavailability” to include non- medical reasons.
August 4, 2016	Separation Policy changed to incorporate rule change and for clarification. Removed “Unavailability” to prevent an employer from having to retain an employee that has lost their credentials, certification due to a court order or other extenuating circumstances that renders the employee unable to perform the essential duties of their job, as set forth in the job description. Notification Required changed to incorporate rule change.
October 21, 2019	The Separation Policy was changed to clarify the current practice of leave payout when an employee is separated while on worker’s compensation leave, to allow for payout of unused vacation and bonus leave earned as of the date of injury, payment of unused vacation and sick leave accumulated during the first 12 months of worker’s compensation leave and payout of any unused bonus leave that is eligible for payout and earned after the date of injury. The Policy also clarifies the procedure that agencies are to follow when separating an employee who is on worker’s compensation leave as well as applicable grievance rights.
December 8, 2022	• Adding language to clarify what an agency should do if an employee provides a verbal resignation. • Adding language to indicate the appointing authority who receives any verbal or written resignation should acknowledge receipt and accept the resignation in writing. Revises burden related to separation due to unavailability to be consistent with N.C.G.S. § 126-34.02(b)(3). Other minor changes for consistency. • Adding language regarding sending Pre-Separation Letters and Letters of Separation via e-mail. Clarified exempt positions.

Separation Policy (cont.)

April 18, 2024	Revised to include a cross-reference to the Compensatory Time Policy for FLSA Not Subject employees exhausting compensatory time when there is a known separation.

Service Awards Program Policy

Contents:

§ 1. Policy

The success of State government in providing services to meet the needs of North Carolina and its citizens is dependent on the efforts of State employees. These employees provide services in the fields of human services, education, transportation, crime control, law enforcement, and health, as well as many other special areas. It is, therefore, important for the State to have competent, committed and dedicated employees to provide effective and efficient services to and for the citizens of our State.

The statewide Excellence in Service Program recognizes employees when they reach career status, and at five years and then in increments of five years through retirement. The accompanying goals of Excellence in Service are to:

- Celebrate North Carolina's heritage, culture, symbols and craftsmen.
- Create and encourage efficiencies by operating the program within state government.
- Offer unique products that, for the most part, cannot be purchased outside of the Excellence in Service Awards Program.

Offer products primarily made in North Carolina or, at a minimum, made in the United States of America

The purpose of the Excellence in Service Program is to express appreciation for longstanding employees as the State recognizes continued dedicated service through service awards. This program celebrates length of service milestones. The

Service Awards Program Policy

§ 2. Service Awards

Program is a partnership between the Office of State Human Resources, Correction Enterprises in the Department of Public Safety and the Museum of History in the Department of Natural and Cultural Resources.

The program provides:

- A tool for Management to recognize ongoing employee dedication and a means to reinforce, acknowledge and retain employee commitment during an employee's tenure with the State at pivotal milestones.
- Award choices which reflect employees' tastes, needs and lifestyles.

§ 3. Covered Employees

Full-time or part-time (20 hours or more) employees are eligible for a Service Award.

Probationary, trainee, Time-limited, temporary and intermittent employees are not eligible for a Service Award.

§ 4. Criteria for Service Awards

- Service awards shall be awarded to the employee by the agency who employs the individual when their milestone is reached.
- Employees who have worked in one or more state government agencies or other recognized public-sector systems, shall be recognized based on total state service at five years and each five-year milestone thereafter.
- Employees who are eligible to retire and have worked in one or more state government agencies or other recognized public-sector systems, shall be recognized based on creditable retirement service if a milestone has been reached. <u>This is a one-time opportunity to be granted only when an employee is retiring.</u>

§ 5. Total State Service Defined

Total State Service is the time of full-time or part-time (20 hours or more) permanent, probationary or time-limited appointments, whether subject to or exempt from the State Human Resources Act.

Service Awards Program Policy

If an employee so appointed is in pay status for one-half or more of the regularly scheduled workdays and holidays in a pay period or is on authorized military leave or workers' compensation leave, credit shall be given for the entire pay period.

Credit toward total State service shall also be given for the following:

- Employment with other governmental units which are not State agencies. (Example: county highway maintenance forces and Judicial Systems)
- Authorized military leave from any of the governmental units for which service credit is granted provided the employee is reinstated within the time limits outlined in the State Military Leave policies.
- Employment with the county Agricultural Extension Service, Community College system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year.
- Employment with a local Mental Health, Public Health, Social Services or Emergency Management agency in North Carolina if such employment is subject to the State Human Resources Act.
- Employment with the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees will be counted, and the full legislative terms of the members.

§ 6. Creditable Retirement Service Defined

This type of service is the length of time an employee has made contributions to the State Retirement System. It is not calculated the same as Total State Service. Refer to the Retirement System handbooks for further information. This service time is used to determine eligibility for a retirement benefit and the amount of the retirement benefit.

§ 7. Program Administration

Each agency is responsible for the administration of this program which shall, as a minimum, recognize employees' service beginning with the date they achieve career status and at five years and then in five-year increments thereafter.

Service Awards Program Policy

§ 8. Agency Procedures and Implementation

Each agency shall administer the Program to include:

- The establishment of the agency cutoff eligibility date,
- The identification of eligible employees as defined by the Office of State Human Resources.
- All employee service awards shall be ordered via E-Procurement where available. Agencies without E-Procurement access shall order through their service award coordinator using the Correction Enterprises website for reference.
- The determination of the time and method of presentation of the awards.

This program is designed to recognize State employees within the provisions of the State Human Resources Act. However, the program may be extended to employees exempt from this statute, as long as the agency administers the awards consistently, following the guidelines provided by the Office of State Human Resources.

§ 9. Records

Each agency shall maintain records through Human Resources and use these records as the official employment history for eligible employees. Agency Human Resources Representatives must coordinate with the Retirement System to verify creditable retirement service to determine if an eligible retiree's service award milestone has been reached.

§ 10. Funds

All purchasing of awards is dependent upon availability of agency funds. Any agency not having sufficient funds to finance the program shall notify the Office of State Human Resources. Employees whose agencies determine state funds are not available to provide a service award program will be eligible to purchase "service awards" with personal funds for themselves or for another eligible employee.

§ 11. Selecting and Ordering Service Awards

The Office of State Human Resources and Correction Enterprises will provide detailed guidelines and procedures for selecting and ordering awards. This information is

Service Awards Program Policy

found in the Training manual that will be kept updated and may be downloaded using the following link:

https://files.nc.gov/ncoshr/documents/files/ServiceAwardsTrainingManual.pdf

§ 12. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(15)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01C .0900

§ 13. History of This Policy

Date	Version
July 1, 1973	• Aggregate service to include SPA employment.
December 13, 1974	• Aggregate service to include County Agricultural Extension Service.
July 1, 1986	• Type of jewelry expanded.
July 1, 1987	• Added legislative terms of members to aggregate service.
January 1, 1989	• Pay status changed to half the workdays and holidays.
July 1, 1989	• Part-time employees eligible for Service Awards. Aggregate service changed to total state service.
December 1, 1995	• Revised to update program provisions.
April 7, 2016	• Updated policy to adjust probationary time from two years to one year. Changed wording of “probationary period” to recognizing employees when they reach “career status.”
January 2, 2018	• Updated policy to include a one-time opportunity for creditable retirement service to be used to reach an employment milestone and to therefore earn a Service Award upon retiring. This can only be utilized in a retirement situation.
October 1, 2020	• Policy reviewed by the Recruitment Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other

Service Awards Program Policy

	policies. No substantive changes. Reported to SHRC on October 1, 2020. • General editorial changes to text, grammar, and language. All changes were minor wording and format changes for clarification.

Severance Salary Continuation Policy

Contents:

§ 1. Policy

N.C.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 (RIF) 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.

This policy provides that severance salary continuation shall be paid to eligible employees in accordance with the provisions outlined below. Severance pay is subject to available funding and approval by the North Carolina Office of State Budget and Management.

§ 2. Covered Employees

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. time-limited employees with 36 or more months of continuous State service in the same time-limited position; and
3. employees in "exempt policymaking" or "exempt managerial" positions as defined in N.C.G.S. § 126-5(b) are eligible for severance salary continuation if the position is abolished as a result of a reduction in force.

Probationary employees, time-limited employees with less than 36 months of continuous State service in the same time-limited position, and temporary employees are not eligible for severance salary continuation.

§ 3. Employees on Leave

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 on that date, if the employee meets the eligibility requirements for severance salary continuation as stated in this policy. This includes employees who are on leave without pay and are receiving workers' compensation or short-term disability payments.

§ 4. Effects of Certain Situations on Eligibility

§ 4.1. Reemployment

To a Permanent or Time-Limited Position - An employee who is reemployed in any permanent or time-limited 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. The reemploying agency or university shall be responsible for determining if the RIF employee is receiving severance salary continuation payments and shall notify the separating agency or university of the date severance salary continuation should be terminated.

To a Temporary Position - An employee who is reemployed in a temporary position with the State, while receiving severance salary continuation, does not remain eligible to receive severance salary continuation.

To a Contractual Services Position - Any employee separated from State government and paid severance wages shall not be employed under a contractual

Severance Salary Continuation Policy

arrangement by any State agency, other than the constituent institutions of the University of North Carolina and the constituent institutions of the North Carolina Community College System, until 12 months have elapsed since the separation.

Reemployment may impact eligibility for Reduction-In-Force (RIF) priority. Please see the Reduction-In-Force Priority Policy located in Section 2 of the State Human Resources Manual for further information related to RIF priority.

§ 4.2. Effect of Declining Employment Offers

An eligible employee who is offered employment with the State and declines to accept, either prior to or following separation, is no longer eligible to receive or to continue to receive severance salary continuation effective the date the offer is declined.

The agency or university offering reemployment shall be responsible for determining if the RIF employee is receiving severance salary continuation payments and shall notify the separating agency or university of the employee's decision to decline the offer and the date severance salary continuation should be terminated.

Declining employment may impact eligibility for Reduction in Force (RIF) priority reemployment. See the RIF Priority policy located in Section 2 of the State Human Resources Manual for information related to RIF priority.

§ 4.3. Effect of Retirement

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 N.C.G.S. § 126-8.5 is shall not be eligible for severance salary continuation. An employee may elect to delay retirement and receive severance salary continuation. An employee who is reemployed in a permanent position 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 for severance salary continuation as stated in this policy.

Severance Salary Continuation Policy

§ 5. Amount of Severance Salary Continuation Payment

The salary used to determine severance wages is the last annual salary 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 payment is the annual salary prior to the promotion plus any across-the-board legislative salary increases.

Excluded from any calculation are any benefits such as, but not limited to, overtime pay, shift pay, holiday premium, or longevity pay. Severance salary continuation shall be based on total State service supplemented by an age adjustment factor as follows:

§ 5.1. Amount of Severance Salary Continuation

Years of Service	Payment
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

*Because probationary employees are not eligible for severance salary continuation, the only covered employees that would be eligible for severance with less than 12 months of service are employees in “exempt policymaking” or “exempt managerial” positions as defined in N.C.G.S. § 126-5(b), if the position is abolished as a result of a reduction in force.

§ 5.2. 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% of the annual base salary shall be added for each full year over 39 years of age; however, the total age adjustment factor payment is limited by the service payment and cannot exceed the total service payment. (See example on next page.)

Severance Salary Continuation Policy

Example: Age 59; Salary - $24,000/year; 20 years' service

Factor	Computation	Amount of Severance Salary Continuation Payment
Service	$2,000/month for 4 months = $8,000	$8,000
Age adjustment	$24,000 x .025 x (59-39) = $12,000 Age adjustment factor cannot exceed the service factor so the age factor is limited to $8,000.	$8,000
	TOTAL	$16,000

§ 6. Method of Payment

Severance salary continuation shall be paid on a pay period basis and shall not be subject to employee or employer retirement contributions, and as a result, will not be included in computing average final compensation for retirement purposes.

The amount to be paid to part-time employees shall be calculated using total State service times the prorated monthly pay.

§ 7. Total State Service Not Credited

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

§ 8. Death of Employee

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.

Severance Salary Continuation Policy

§ 9. Unemployment Insurance

An employee receiving severance salary continuation is not entitled to receive unemployment compensation.

§ 10. Funding

Funds for severance salary continuation will be provided as directed by the Office of State Budget and Management.

§ 11. Documentation

For each eligible employee receiving severance salary continuation, agencies shall provide the severance calculation, severance payment amount, and position abolishment information on the separation Personnel Change Request (PCR). Universities shall submit the University Reduction in Force/Severance Pay Request Form, the severance calculation, and the Human Resources Data Mart (HRDM) Employee View Form to OSHR for approval.

§ 12. Discontinued Service Retirement Allowance

N.C.G.S. § 126-8.5 provides for a discontinued service retirement allowance. Refer to that section of the State Human Resources Act for details.

§ 13. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-8.5 provides, “Severance wages shall be paid according to the policies adopted by the State Human Resources Commission.” This policy is issued under the authority of N.C.G.S. § 126-8.5 and 126-4, the statute on policies issued by the Commission.

It is compliant with the Administrative Code rules at:

- 25 N.C.A.C. 01D.2701 to .2704.

Severance Salary Continuation Policy

§ 14. History of This Policy

Date	Version
July 1, 1979	Policy on severance pay – closing of a State institution adopted within policies on separations. Received two weeks pay. (Chapter 143)
October 1, 1985	New policy specific to this topic.
December 1, 1985	Age adjustment factor revised to limit payment not to exceed 21 years of service.
May 1, 1987	Added provision that a permanent employee scheduled for reduction in force may accept a temporary State position and remain eligible to receive severance salary continuation. Also, a reduction in force employee may decline a lower level position and retain eligibility for severance salary continuation. Age adjustment factor clarified - 39 years of age instead of 40 (Adm. Rules Comm. voiced a technical objection; therefore, effective date was delayed from 2-1-87 to 5-1-87.)
November 1, 1990	Leave without pay option deleted.
March 1, 1991	Extend eligibility for priority reemployment and severance salary continuation to employees who have completed six months or more of a trainee appointment. Also, to employees who attained permanent status prior to entering a trainee appointment. Clarifies that eligibility criteria include no foreseeable opportunity for reemployment at the time of separation.
September 1, 1991	Deleted reference to Statute N.C.G.S. § 143-27.2 to satisfy ARRC.
October 1, 1995	Added reference to N.C.G.S. § 143-27.2 that provides that the Director of the Budget is responsible for determining that a severance salary continuation or a discontinued service retirement allowance, accomplishes economies in the State Budget. Clarified appointment type eligibility and non-eligibility. Added that an employee receiving worker's compensation or short-term disability payments is eligible for severance salary continuation.

Severance Salary Continuation Policy

	Added that 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 on that date. Added that an employee with a permanent position, separated by reduction in force may accept a State contractual service arrangement and remain eligible to receive severance salary continuation. Clarified that an employee who is reemployed in any permanent position that is funded in part or in whole by the State, while receiving severance salary continuation will no longer be eligible for such pay effective the date of reemployment. Clarified that an employee who is separated and receiving retirement benefits from early retirement, service retirement, long term disability or discontinued service retirement as provided by N.C.G.S. § 143-27.2 is not eligible for severance salary continuation. Deleted the provision that an employee who has received a full severance salary continuation, who is reemployed later and reduced in force again, would only receive the difference between previous payments and the current eligibility. Deleted the provision that an employee 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 without credit for total State service prior to retirement status. Since this could be discriminatory, the provision is deleted and the employee will be eligible for severance based on total State service.
July 1, 1998	N.C.G.S.§ 143-27.2 was amended to: 1) Add provision that any employee separated and paid severance wages shall not be employed under a contractual arrangement by any State agency, other than the university system and community college system, until 12 months have elapsed since the separation. 2) Provide that

Severance Salary Continuation Policy

	severance wages will be calculated on the last annual salary unless the employee was promoted within the previous 12 months. If promoted, the calculation is on the salary prior to the promotion plus any across-the-board legislative salary increases. In addition, the provision for Discontinued Service Retirement Allowance has been added for informational purposes.
July 1, 2008	Corrects statute citation as a result of the move of the severance provision from N.C.G.S. § 143 to 126.
March 1, 2009	Revised to conform to rules that were approved clarifying some of the severance eligibility provisions.
October 1, 2014	Removed of the term “permanent” when referencing “time-limited” positions. Changed trainee eligibility period from 6 months to 24 months to align with the legal definition of probationary period. Clarified 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. Clarified in the “reemployment” section that reemployment in a timelimited position is an event that makes an employee ineligible for continued severance pay. Also reemployment in a temporary position makes an employee ineligible for continued severance pay. Amended the “effects of declining employment offers” section to align with the Reduction in Force policy and law. The “documentation” section is being updated to match the current documentation and approval process.
June 1, 2015	A statement was added to the “policy” section to clarify that severance pay is subject to available funding and must be approved by the Office of State Budget and Management. In the “covered employees” section, removed reference to permanent or timelimited position when referring to available employment. N.C.G.S. § 126-8.5(a) does not specific the type of

Severance Salary Continuation Policy

	position available for reemployment so the policy needs to reflect any available position for reemployment. This now matches the provisions outlined in the "reemployment" section. Corrected the "effect of declining employment offers" section to comply with provisions of N.C.G.S. §126-8.5(a). N.C.G.S. § 126-8.5 states that severance is only paid to an employee when reemployment is not available and in the "reemployment" section of the policy it is stated that reemployment in any position (permanent, part-time, temporary) stops severance eligibility. As a result, an employee cannot decline an offer for any position regardless of the salary grade and salary rate and still be eligible for severance. Also added a requirement for the agency or university offering reemployment to notify the separating agency of the declined offer so severance is terminated. Removed information about RIF priority reemployment rights from the policy since there is a separate policy that covers priority reemployment rights. Duplication of the RIF priority policy is not necessary. Added clarification to the "amount of severance" chart to reflect that the only covered employees eligible for severance with less than 24 months of service are employees in "exempt policymaking" and "exempt managerial" positions.
September 7, 2017	Policy revised to delete all reference to trainee appointments, per appointment types and career status.
October 13, 2022	Modified policy to make clear that eligibility period for time-limited employees must be continuous employment in the same time-limited position. For easy reference, added language from statute (N.C.G.S. § 126-8.5) indicating that longevity pay and other benefits are not included in the calculation. Updated table in policy to reflect current 12-month probationary period.

Sick Leave Policy

Contents:

§ 1. Policy

Sick leave is granted to employees who are in pay status for one half or more of the regularly scheduled workdays and holidays in the pay period.

§ 2. Covered Employees and Sick Leave Credits

Full-time permanent, probationary, and time-limited employees are eligible for leave at the rate of 8 hours per month (96 hours per year).

Part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for leave at a prorated amount.

Temporary and part-time (less than half-time) are not eligible for leave.

Note: Vacation leave in excess of 240 hours (prorated for part-time employees) on December 31 of each year shall be converted to sick leave.

§ 3. Accumulation

Sick leave is cumulative indefinitely.

§ 4. Advancement

The appointing authority may advance sick leave not to exceed the amount an employee can accumulate during the current calendar year.

Sick Leave Policy (cont.)

§ 5. Verification

To avoid abuse of sick leave privileges, a statement from a medical doctor or other acceptable proof may be required. Evidence to support leave for adoption-related purposes may be required.

§ 6. Leave Charges

Sick leave shall be taken and charged in units of time appropriate and consistent with the responsibility of managing absences in keeping with operational needs. Only scheduled work time shall be charged in calculating the amount of leave taken.

§ 7. Benefits Continue

When exhausting leave an employee continues to accumulate leave, is entitled to holidays and is eligible for salary increases during that period.

§ 8. Sick Leave Transferable

When employee transfers from	THEN, sick leave
State SHRA to SHRA	shall be transferred.
State SHRA to EHRA	may be transferred subject to the receiving agency's approval. If EHRA is non-leave earning, sick leave may be transferred and held for future use should employee transfer back to SHRA or it may be applicable toward retirement.
State EHRA to SHRA	may be transferred subject to the receiving agency's approval.

Sick Leave Policy (cont.)

State agency to • Public school • Community College • Technical Institute • Local Mental Health • Local Public Health • Local Social Services • Local Emergency Management	may be transferred subject to the receiving agency's approval.
A local agency listed above to a State agency	may be transferred subject to the receiving agency's approval.

§ 9. Uses of Sick Leave

Sick leave may be used for:

- illness or injury,
- medical appointments,
- temporary disability due to childbirth,
- to care for member of immediate family (including care for mother during temporary disability),
- death in immediate family,
- donations to a member of the immediate family who is an approved voluntary shared leave recipient, and
- adoption of a child, limited to a maximum of 30 days for each parent (which is equivalent to a biological mother's average period of disability)

Note: This is interpreted to mean at the time of physical possession of the child and have either adopted or are in the process of adoption.

Advisory Note: If an employee does not have sufficient leave to cover a prolonged illness (of self or to care for a parent, child, spouse, or dependent living in the household who has a prolonged illness), the employee may qualify to receive voluntary shared leave. See the Voluntary Shared Leave Policy in this Section of the Manual.

Sick Leave Policy (cont.)

§ 10. Definition of Immediate Family

Spouse	Parent (Mother/Father)	Child (Daughter/Son)	Brother/Sister	Grand/Great	Dependents
Husband Wife	Biological Adoptive Step Loco Parentis* In-law	Biological Adoptive Foster Step Legal Ward Loco Parentis* In-law	Biological Adoptive Step Half In-law	Parent Child Step In-law	Living in the employee's household
*A person who is in the position or place of a parent					

§ 11. Leave Without Pay for Extended Illness

If an employee, or the employee's child, parent or spouse, has a serious illness that qualifies under the Family and Medical Leave Act, the provisions of that policy shall be followed. (The FMLA Policy follows the Sick Leave Policy in this Manual.)

If the illness does not qualify for the FMLA, the provisions of the Leave without Pay Policy shall be followed. (The Leave without Pay Policy is located at the end of this Section in this Manual.)

§ 12. How to handle sick leave upon separation and reinstatement

	Unused Sick leave shall:	Unused Sick leave may:
Separation	• not be paid in terminal leave, • be entered on the personnel action, and • be deducted from final salary check in one-tenth hour units if overdrawn. (See exceptions for exhausting sick leave below.)	• be applied toward retirement if eligible to retire within five years. See Retirement Credit below.

Sick Leave Policy (cont.)

Reinstatement	• be reinstated when employee returns from authorized leave without pay, and • be reinstated when employee returns within five years from any type of separation.	• be reinstated when an employee returns to State employment within five years from SHRA employment with a local government*, public school, community college, or technical institute.
*Social Services, Mental Health, Public Health, and Emergency Management		

§ 13. Retirement Credit

One month of credit is allowed for each 20 days, or any portion thereof, of sick leave to an employee's credit upon retirement.

§ 14. Sick Leave Records Agencies shall:

- maintain annual records of sick leave for each employee,
- balance leave records at least at the end of each calendar year;
- notify employees of leave balances at least once each year, and
- retain leave records for all separated employees for a period of at least five years from date of separation.

§ 15. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .0300

§ 16. History of This Policy

Date	Version
July 28, 1949	• Policy established granting 3 days sick leave to employees when there is a death in the family.

Sick Leave Policy (cont.)

	• Also established that employees separated from State service through no fault of their own would retain accumulated sick leave if reemployed by the State within 1 year from the time of separation.
April 1, 1950	• Adopted policy stating that full-time permanent employees must be pay status during the entire month in order to earn either full sick an annual leave credits for the month.
June 16, 1950	• Full time permanent employees who are in pay status during one half or more of the scheduled working days in a month shall earn full sick and annual leave credits for the month.
November 29, 1951	• Sick leave to be calculated based on two times the number of days scheduled to work each week. • In cases of extended sick leave, both sick and annual leave must be exhausted before leave without pay is granted. In other cases where leave without pay is required, annual leave must be exhausted before leave without pay can begin.
September 18, 1953	• Maternity leave policy adopted. Leave is without pay, sick leave may not be used and annual leave is paid in a lump sum before going on leave without pay.
January 1, 1970	• Extended to part-time employees in permanent positions eligibility for sick and annual leave, holidays and salary increments which apply to full-time permanent employees – earn on a pro-rata basis.
December 17, 1970	• Sick leave accrued shall be credited if reinstated within one year from date of separation, because of reduction in force, authorized leave without pay or while drawing workmen's compensation. If employee is separated for other reasons and is reinstated within one year the employing agency may consider reinstatement of sick leave credits.
April 1, 1971	• Approved transfer of annual and sick leave between state and local governments.

Sick Leave Policy (cont.)

June 20, 1972	• Sick leave may be used for actual period of temporary disability associated with childbearing. Annual leave must be exhausted before going on leave without pay for maternity purposes. If annual leave overlaps with temporary disability in which sick leave is used, annual leave is exhausted before and after.
April 1, 1973	• Sick leave may be transferred from a State agency to a public school, community college or technical institute and in turn it may transfer sick leave to a State agency.
July 1, 1973	• Sick leave may be used for medical appointments - taken in one-hour units.
March 1, 1975	• Sick leave shall be exhausted through the last full hour of unused leave. Overdrawn leave shall be deducted in full hour units, i.e., full hour for any part of an hour overdrawn.
January 1, 1976	• Revises reinstatement of sick leave policy to provide that a State agency may consider reinstating sick leave credits for employees who separated from a subject local government position within one year prior to state employment.
May 1, 1979	• Employees separated because of a reduction in force shall be credited with accrued sick leave if reinstated within one year, and may receive such credit up to three years following separation.
January 1, 1980	• Adds employees of public schools, community colleges, and technical schools to present sick leave policy of reinstatement within three years from last workday.
January 1, 1983	Revised to make the following changes: • Increase sick leave from 10 to 12 days. • May use sick leave to care for members of immediate family. • Delete the maximum of 3 days granted for death in immediate family. • Possible for employees to charge vacation instead of sick leave for personal illness.

Sick Leave Policy (cont.)

	• Mandatory to reinstate sick leave when an employee returns to State service after three years. • Immediate family limited to spouse, parents and children and other dependents living in the household.
August 1, 1985	• Revised to allow sick leave to be charged in less than one-hour units.
February 1, 1988	• Parental leave provisions moved to a separate policy.
August 1, 1988	• Sick leave to be reinstated within 5 years instead of 3. Allow for exhausting sick leave during waiting period before short-term disability. • Have choice to exhaust or retain remaining sick leave.
January 1, 1989	• Pay status changed to half the workdays and holidays.
December 1, 1993	• Changed to conform to the Family and Medical Leave. The revision deleted reference to options for using paid leave for this purpose and adds a sentence that states “Eligible employees shall be granted leave in accordance with the Medical and Family Leave Policy for a period of 12 workweeks.” Additional leave without pay beyond the 12 workweeks is administered in accordance with the Other Leave Without Pay Policy (presently titled “Leave Without Pay). • A provision added to conform to a revision to G.S. 126-8 which states that on December 31 of each year, any employee who has vacation leave in excess of the allowed accumulation shall have that leave converted to sick leave.
July 1, 1995	Revised to: • Include time-limited appointment for eligibility to earn leave. • Allow a member of the immediate family to use sick leave to care for the mother and newborn infant during the natural mother’s period of temporary disability (to coincide with Family and Medical Leave Policy). • Changed definition of immediate family:

Sick Leave Policy (cont.)

	• Changed definition of parents and children to parallel the FMLA. • Added sister or brother, and included step-, half- or in-law relationships. • Added grandparents, great-grandparents, grandchildren and great- grandchildren. • Changed the definition of immediate family in the case of death to be the same as for use of sick leave. • Changed the deduction for overdrawn leave from a full hour unit to the unit nearest to a tenth of an hour. • Changed the method for exhausting leave from a full hour unit to the nearest tenth of an hour. • Allows an agency to require an employee to exhaust vacation leave in addition to sick leave prior to going on leave without pay. Changed the retention of leave records from four to five years.
EFFECTIVE DATE CHANGED TO JULY BY RULES REVIEW	
December 1, 1995	• Revised to allow sick leave up to 30 days for adoption purposes. • Revision 6 Definition of Immediate Family corrected to omit “In-law” under the 09-05-2000 definition of Child. • Revision 8 Clarified that daughter-in-law and son-in-law are part of the immediate 11-01-2000 family definition.
July 1, 2001	• The General Assembly passed HB 1107 which removed the cap on sick leave creditable to retirement for members of the Teachers' and State Employees' Retirement System. Previously the maximum amount creditable could not exceed 12 days of credit for each year of membership service or fraction thereof.
July 1, 2001	• The General Assembly passed HB 1107 which removed the cap on sick leave creditable to retirement for members of the Teachers' and State Employees' Retirement System. Previously the maximum amount creditable could not exceed 12 days of credit for each year of membership service or fraction thereof.

Sick Leave Policy (cont.)

September 1, 2002	• Revised to clarify that 30 days is the average period of disability for childbirth.
May 1, 2004	• Clarify policy on transfer of leave from SPA to EPA and vice versa.
January 1, 2007	• Changed Leave Records Section to clarify that leave records shall be balanced at least at the end of each calendar year. • Added note to clarify that if leave records are kept electronically, the agency does not have to keep a paper copy.
October 1, 2007	• Under the paragraph Leave Charges, deleted the sentence that leave to be exhausted before going on leave without pay shall be in units of one-tenth of an hour.
January 1, 2008	Advisory Note added for agencies using BEACON HR/Payroll System: • If an employee has holiday compensatory time, overtime compensatory time, or on-call compensatory time, it shall be taken before sick leave. • Hours worked in excess of the employee's established work schedule will be used to offset leave reported in the same overtime period. Leave will be restored to the employee's balance for later use.
October 1, 2008	• Clarified exceptions/procedures when employee is exhausting sick leave.
July 1, 2009	• Deletes Advisory Note and the leave hierarchy since this does not apply to Sick Leave.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointments types and career status.

Sign-On and Retention Bonus Policy

Contents:

§ 1. Introduction

State agencies may develop programs to provide bonuses to recruit or retain employees in hard-to-fill occupations. Bonuses awarded under this policy are to aid agencies and other covered employers[1] in recruitment and retention efforts necessary to carry out mission-critical services and initiatives.

A sign-on bonus is a discretionary bonus that serves as a recruitment incentive. This initiative aids in the employment of individuals for critical positions that have labor market shortages which affect the business needs of the agency and impair the delivery of essential services.

A sign-on bonus may be offered either for:

1. A specific job classification

or

2. An individual position.

For details, see “Sign-On Bonus Situation 1” and “Sign-On Bonus Situation 2” below in this policy. In either situation, the sign-on bonus must be as part of a program established to attract qualified candidates in critical positions that have labor market shortages, and it must

[1] References to “agencies” in this document also include commissions, boards, and university or community college systems or institutions when they set the pay of employees who are subject to the State Human Resources Act.

Sign-On and Retention Bonus Policy (cont.)

be common practice to offer a sign-on bonus to a candidate for a position to be competitive in the market.

Retention bonuses are discretionary bonuses that may be granted by an agency when an employee would be likely to leave the agency in the absence of a retention incentive.

Retention bonuses may be offered as a retention incentive:

1. To retain a group of employees in critical positions that have labor market shortages impacting the business needs of the agency and impairing the delivery of essential services.

2. To retain an employee when the agency has offered a sign-on bonus as a recruitment incentive to an individual in a similar, critical position that has labor market shortages which affect the business needs of the agency and impair the delivery of essential services.

3. To retain a team of employees assigned to a special initiative of the agency, state, institution, or system where their combined special skills and understanding of the initiative are critical to its successful completion.

or

4. To retain an employee critical to the agency's mission.

For details, see "Retention Bonus Situation 1" through "Retention Bonus Situation 4" below in this policy.

§ 2. Employee Eligibility for Sign-on and Retention Bonuses

Sign-on Bonus Eligibility

Only candidates for probationary, permanent, or time-limited positions may be eligible for sign-on or retention bonuses. To be eligible for a sign-on bonus, the candidate must not have worked as a probationary, permanent, or time-limited employee in the last 12 months as an employee in North Carolina state government, including without limitation the judicial system, state executive branch agencies, and the university system.

Sign-On and Retention Bonus Policy (cont.)

Employees eligible for a sign-on bonus must work at least 20 hours per week. Bonuses for eligible employees working in part-time positions will be prorated based on hours worked.

Retention Bonus Eligibility

Only probationary, permanent, or time-limited employees may be eligible for sign-on or retention bonuses. Probationary, permanent, or time-limited employees may be eligible for a retention bonus if:

- The employee has not received in the last 24 months any retention or sign-on bonuses that total more than $2,500 from any agency for the job classification in which they are working. The limit counts all bonuses awarded over a 24-month period as of the bonus award date, and counts these as if all installments are complete. (This 24-month period can be waived with OSHR approval.)

and

- The employee's overall performance evaluation rating is at least “Meets Expectations,” and the employee does not have an active disciplinary action.

Employees eligible for a retention bonus must work at least 20 hours per week. Bonuses for eligible employees working in part-time positions will be prorated based on hours worked.

§ 3. General Criteria for Use

Must Not Be Based on Productivity

Sign-on and Retention bonuses shall not be tied to meeting specific goals, special levels of productivity, quality and accuracy of work, efficiencies, or attendance.

Flexibility Authorization

OSHR may enter into delegation or decentralization agreements (“flexibility authorizations”) for agencies to perform pay actions. N.C.G.S. § 126-3(b)(4). Agencies may only approve sign-on and retention bonuses within the flexibility authorization granted to them by OSHR. For requests that are outside their flexibility authorization, agencies must under

Sign-On and Retention Bonus Policy (cont.)

state law have OSHR's review and approval before completing the proposed pay action. N.C.G.S. § 126-3(b)(6). OSHR will make available a form (Form BON) that each agency can use as a guide to its flexibility authorization on sign-on and retention bonuses. Agencies should establish mechanisms to track and audit their use of flexibility authorizations.

OSBM Approval

Sign-on or retention bonus payouts for groups/teams of 50 or more employees shall require advance approval by the Office of State Budget and Management (OSBM) to confirm funds availability. A copy of the documentation must be sent simultaneously to OSHR.

Documentation

Agencies must generate a job-related justification that supports the bonus. Complete, accurate and compelling documentation is a best practice and is required to demonstrate compliance, legal defensibility, and fiscal responsibility. Therefore, agencies must prepare and keep thorough supporting materials for each bonus decision, including specific details of the process used to determine salary. These supporting materials must be placed in the system of record designated by OSHR. To document the decision-making process, agencies are required to use a worksheet (Form BON) that has been developed by OSHR. Agencies may also supplement Form BON with agency-specific worksheets.

Equity and Other Pay Factors

Agencies must apply the pay factors found in the Pay Administration Policy when making decisions regarding when and how to grant sign-on or retention bonuses to similarly situated employees. Refer to the "similarly-situated employees" definition in the Pay Administration Policy. It is not a requirement to pay existing employees retention bonuses just because a sign-on bonus is offered to candidates.

Mentioning Sign-On Bonuses in a Job Posting

If a sign-on bonus is mentioned in a job posting, agencies must include the following statement, so that potential applicants are aware of the restriction stated in § 2 of this Policy above: "To be eligible for a sign-on bonus, the candidate must not have worked as a probationary, permanent, or time-limited employee in the last 12 months as an employee subject to the State Human Resources Act."

Sign-On and Retention Bonus Policy (cont.)

§ 4. Specific Situations In Which a Sign-On or Retention Bonus Can Be Provided

For an agency to offer a sign-on or retention bonus, certain criteria must be met for each of the situations outlined above. The six situations below are the only situations in which an agency may offer a sign-on or retention bonus. The individual criteria for each of these situations follows:

Sign-On Bonus Situation 1:
Sign-on Bonus for a Specific Job Classification

In this situation, the sign-on bonus provides a recruitment incentive to attract qualified candidates in job classifications critical to the mission of an agency that have labor market shortages impacting the business needs of the agency and impairing the delivery of essential services. To enhance its ability to recruit during labor market shortages, an agency may determine the need to offer competitive sign-on bonuses to candidates hired into positions for a specific job classification within the agency, division, facility, or unit. The sign-on bonus may also be limited to a geographical area.

If the agency has flexibility authorization to provide a sign-on bonus for a job classification, the agency shall notify the Office of State Human Resources (OSHR) within 30 days that it has established a sign-on bonus program and provide supporting documentation. Documentation shall include:

- The proposed duration for the sign-on bonus program.
- Amount of the sign-on bonus and how payment shall be distributed (ex., in 1st paycheck and in 12th paycheck).
- That the sign-on bonus will be set as a flat rate for the job classification and will be consistently applied to all candidates.
- Data demonstrating that (1) turnover rates are significantly higher than acceptable, (2) retention rates are significantly lower than acceptable, (3) vacancy rates are significantly higher than acceptable, or any combination of these three. (This

Sign-On and Retention Bonus Policy (cont.)

evaluation may be based on historic rates or on the agency's ability to meet its functions with that rate of turnover, retention, or vacancies.)

- Data demonstrating that sign-on bonuses are recognized as a common practice to be competitive in the market for the candidates being recruited for a specific classification.
- Steps are being taken to mitigate the recruitment or retention challenges.

Sign-On Bonus Situation 2:
Sign-on Bonus for an Individual Position

In this situation, the sign-on bonus provides a recruitment incentive to attract qualified candidates in a position (typically the employee in the position will serve as the only individual in a role or is one of two within an agency) that is critical to the mission of an agency in which the market is very competitive. An agency's inability to attract and hire a strong candidate would impact the business needs of the agency and impair the delivery of essential services.

Agency documentation shall include:

- amount of the sign-on bonus and how payment will be distributed to new hire;
- justification demonstrating that sign-on bonuses are recognized as a common practice to be competitive in the market for the position being recruited; and
- steps are being taken to mitigate the recruitment or retention challenges.

Retention Bonus Situation 1:
Retention Bonus for Positions in a Specific Job Classification

In this situation, the retention bonus provides a method of retaining a group of employees in a critical classification, or in specific critical positions within a classification, with labor market shortages impacting the business needs of the agency and impairing the delivery of essential services.

Sign-On and Retention Bonus Policy (cont.)

- To provide this retention bonus, the agency may be, but is not required to be, actively offering a parallel sign-on bonus to employees in the same job classification within the agency, or a specific division or unit.
- The retention bonus may also be limited to a geographical area.
- The same limitations apply, and the same documentation must be generated, as is listed above under Sign-On Bonus Situation 1.
- The agency shall notify OSHR in writing of the program with supporting documentation within the same 30-day time frame as the notification under Sign-On Bonus Situation 1.
- Matching retention bonuses shall not exceed the amount established for the related classifications listed in the sign-on bonuses program without OSHR's review and approval.
- To provide this retention bonus, the agency must document any other steps that are being taken to mitigate the recruitment or retention challenges.

In addition:

- The agency shall request approval from OSHR, in writing, for any retention bonus program that includes a team of 50 or more employees, or the retention bonus program is expected to last more than one year, even if the agency has flexibility authorization for that program. (This is in addition to, and should occur prior to, the approval by OSBM required under page 4 of this policy above. The documentation sent to OSBM seeking approval must be sent simultaneously to OSHR.)

Sign-On and Retention Bonus Policy (cont.)

Retention Bonus Situation 2:

Retention Bonus in Parallel with a Sign-On Bonus for an Individual

In this situation, the retention bonus is provided to retain an employee when the agency has offered a sign-on bonus as a recruitment incentive to an individual in a similar, critical position within the same work unit that has labor market shortages which affect the business needs of the agency and impair the delivery of essential services.

- The agency must be offering a sign-on bonus to the candidate selected for an individual position in order to provide a retention bonus to an employee in the same role within the agency.
- A matching retention bonus shall not exceed the amount approved for the new employee receiving the sign-on bonus without review and approval by OSHR.
- Steps are being taken to mitigate the recruitment or retention challenges.

Retention Bonus Situation 3:

Retention Bonus Tied to a Special Initiative

In this situation, the retention bonus is provided to retain a team of employees assigned to a special initiative of the agency, state, institution, or system where their combined special skills and understanding of the initiative are critical to its successful completion. A "special initiative" is a defined project with specific goals, an expected beginning and end, and dedicated staff who spend a substantial amount of their time on that project. The following criteria must be satisfied:

- the employees must have specialized skills critical to the initiative's successful completion,
- the special initiative must have a defined completion or end date (although that date may change over time),

Sign-On and Retention Bonus Policy (cont.)

- the agency is or would not be able to recruit another individual to replicate the demonstrated skills of employee(s) considered to be subject matter experts within the specialized team without impacting the timely completion of the project, and

- steps are being taken to mitigate the recruitment or retention challenges.

In addition:

- The agency shall notify OSHR in writing of any retention bonus program that includes a team of 50 or more employees, even if the agency has flexibility authorization for that program. (This is in addition to, and should occur prior to, the approval by OSBM required under page 4 of this policy above. The documentation sent to OSBM seeking approval must be sent simultaneously to OSHR.)

Retention Bonus Situation 4:

Retention Bonus for an Individual

In this situation, the retention bonus is provided to retain an employee when they are likely to leave the agency to work for another agency or employer. The following criteria must be met for that specific employee:

- there is a competitive labor market for the skillset,

- the employee has skills critical to the mission of the agency that would be difficult to timely replace, and

- steps are being taken to mitigate the recruitment or retention challenges.

This retention bonus option also provides agencies with a mechanism to retain an employee critical to an agency's mission during a period of transition, such as a closure or relocation of an employee's office, facility, activity, or organization, who would be likely to leave before the transition is complete.

Sign-On and Retention Bonus Policy (cont.)

§ 5. Steps to Take to Mitigate Recruitment and Retention Issues

Whenever a bonus is provided under this Policy, agencies should have a plan, included in Form BON, to address any broader recruitment or retention issues for the job classification or position.

Examples of other recruitment and retention strategies include: increasing efforts to reduce vacancies to offset heavier workloads on employees; moving the employee's salary towards midpoint, if appropriate; offering workplace flexibility to be competitive with the market; addressing any pay equity issues; supporting inclusion; conducting informal "stay" interviews to understand the employees' career interests and goals; developing career paths so employees can see opportunities for growth within the agency; and increasing training opportunities. Some of these steps take time to implement, but each can help to mitigate recruitment or retention problems.

§ 6. Payment and Recoupment of Sign-on or Retention Bonus

Amount

The amount of a sign-on or retention bonus shall be determined based on labor market data and pay factors, which include funding availability.

Payment of Bonuses

A bonus of $2,500 or less may be paid in one installment or in multiple installments.

A bonus over $2,500 must be paid in at least two installments. An agency can choose the number of multiple defined payments (monthly, quarterly, etc.).

- The minimum amount of time over which the first and the last installments are paid shall not be less than 90 days.
- No more than two-thirds of the total bonus may be paid in the first installment.
- The maximum amount of time for the last installment shall be no longer than 18 months following the first installment. Periods of LWOP do not count toward those 18 months.

Sign-On and Retention Bonus Policy (cont.)

The requirements listed above do not apply if the agency will be funding the bonus through grant funds that must be paid out within a limited duration of time. In (and only in) this situation, the agency may pay in one installment a bonus of more than $2,500, or the agency may pay more than two-thirds of the total bonus in the first of multiple installments. In these circumstances, the agency shall seek to split the bonus into multiple installments to the extent that is reasonable given the constraints placed on the agency by the grant funding source.

Period of Consecutive Service

- For a bonus paid in one installment, the "period of consecutive service" under this policy is between 3 months and 18 months, at the agency's discretion.
- For a bonus paid in multiple installments, the "period of consecutive service" under this policy shall be either of the following:
    - The total period of time between the first installment and the last installment. (This is the default if the employee's repayment agreement does not set another period of consecutive service.)

    or

    - If (and only if) the agency will be funding the bonus through grant funds that must be paid out within a limited period of time, the agency may set the period of consecutive service to be longer than the time between installments, and to a number between 3 months and 18 months. This alternative period of consecutive service must be stated in the employee's repayment agreement. Agencies may not set the period of consecutive service to be shorter than the time between installments.

Eligibility for the Final Installment

An employee in an active pay status is eligible for the final sign-on or retention bonus installment if the employee remains employed in the same agency and in the same occupational area for the amount of time between installments as defined in the employee's repayment agreement.

Sign-On and Retention Bonus Policy (cont.)

Notwithstanding the above, an employee is not eligible for the final sign-on or retention bonus installment if:

- the employee's overall performance rating at any time is not at a minimum of "Meets Expectations" or the employee has documented disciplinary actions for misconduct or performance;
- the employee subsequently transfers to another agency before the final installment is to be paid; or
- the employee's employment terminates before the final installment is to be paid.
- If the final installment is paid prior to the end of the period of consecutive service, and the employee transfers positions or leaves the agency, the employee is still required to repay a prorated amount as detailed in the Repayment section below.

Availability of Funds

The approval of all personnel actions, including any bonus action, is subject to the availability of funds. No action can be implemented that would exceed the funds available. Any written salary commitment shall include a statement of notification that the salary is subject to the availability of funds. Communications about salary are subject to retraction if there is an administrative error or the salary has not been approved by the proper authority.

Employees Are Not Required to Accept a Sign-On Bonus or Retention Bonus

If a sign-on or retention bonus is offered to an applicant or employee, the applicant or employee is free to decline it. Sign-on or retention bonuses are not mandatory, and it is not a condition of employment for someone to accept a sign-on or retention bonus.

Repayment

Before an employee may receive a sign-on or retention bonus, that employee must execute an agreement under which the employee must repay the bonus, in whole or part, if they terminate employment with the agency or transfer to another agency, either voluntarily or involuntarily, before the completion of the agency's defined period of consecutive service. For a bonus paid in one installment, the period of consecutive service starts when the installment is made and is between 3 months and 18 months, at the agency's discretion. For

Sign-On and Retention Bonus Policy (cont.)

a bonus paid in multiple installments, the period of consecutive service is the total period of time between the first installment and the last installment, or a period of time defined by the employee's signed repayment agreement, as authorized in the Period of Consecutive Service section of this policy above.

Employees are free to not sign this agreement and not receive a sign-on or retention bonus, but the employee must sign the repayment agreement to receive the bonus.

The repayment shall be based on the following formula:

$$\frac{\text{Amount of Sign On or Retention Bonus Received}}{\text{Period of Consecutive Service, in Months}} = \text{Prorated Monthly Amount}$$

$$\text{Prorated Monthly Amount x (Period of Consecutive Service – Months Worked)} = \text{Amount Due}$$

For example, if the employee received a $5,000 sign-on bonus, to be paid in a first installment of $3,000 following sign-on and a second installment of $2,000 twelve months later, but the employee leaves after six months, the repayment would be calculated as follows:

$$\frac{\$3{,}000 \text{ Sign On Bonus Received}}{12 \text{ Month Period of Consecutive Service}} = \$250 \text{ Prorated Monthly Amount}$$

$$\$250 \text{ x } (12 \text{ months} - 6 \text{ months}) = \$1{,}500 \text{ Amount Due}$$

The amount due shall be deducted in full from the final paycheck to the employee from the agency that provided the bonus. If the amount deducted exceeds the final paycheck, the remaining balance shall be paid in full to the agency within 60 days from the last date of employment.

Employees may not be disciplined for failing to stay with an agency for the full period of consecutive service. Similarly, although an employee may have an amount to repay if the employee received a sign-on or retention bonus, but did not stay with the agency for the full period of consecutive service, the State's only remedy is to recover those funds from the employee, not seek to discipline the employee.

Notwithstanding any other provision of this Policy, an employee does not need to repay any amount of a bonus if the employee's transfer or termination of employment was due to:

Sign-On and Retention Bonus Policy (cont.)

- Death or severe illness requiring hospitalization of the employee or the employee's parent, spouse, sibling, or child;
- Separation because employee was unable to perform all the position's essential duties because of a medical condition or the vagueness of a medical prognosis; or
- A reduction in force.

Impact of Anti-Pension-Spiking Laws

When implementing any bonus program or granting an individual bonus, agencies should consider the potential impact of fiscal commitments to comply with the anti-pension-spiking laws, as first enacted by 2014 House Bill 1195 and amended thereafter. In some situations for well-compensated employees, bonuses may result in a need for the agency, at the time the employee retires, to pay an additional employer contribution into the Teachers' and State Employees' Retirement System.

§ 7. Credit for Consecutive Service; Impact of Leave on Consecutive Service Credit

One month of credit toward the defined period of consecutive service is granted for each month that the employee is in pay status for one-half or more of the scheduled workdays and holidays in the pay period.

Time on military leave or workers' compensation leave applies to the period of consecutive service, with the final installment being paid when the employee returns to work.

If an employee is on leave without pay, all periods of time for the consecutive service calculation, and all agreements under which the employee must repay the bonus, will be paused for the time while the employee is on leave without pay. (For example, if an employee receives a retention bonus that is to be paid in two installments 18 months apart, and then the employee goes on leave without pay for two months, the second installment would be paid 20 months after the first installment.)

§ 8. Agency Responsibilities

Prior to approving any sign-on or retention bonus, agencies shall:

Sign-On and Retention Bonus Policy (cont.)

(1) Establish written procedures for review and approval of bonuses within their agency. HR directors shall be final approval for sign-on and retention bonuses. Any delegation of authority must be clearly documented within the agency's program.

(2) Document how an employee or group of employees meets the criteria for the bonus.

(3) Create and retain signed agreements with the employee that defines eligibility, method of payment, and criteria for repayment.

(4) Submit for review to and approval by the Office of State Human Resources any sign-on or retention bonus that exceeds their flexibility authorization.

(5) Fund bonuses from receipts or state appropriated funds.

(6) Receive advance approval from OSHR to administer a bonus program for a group of 50 or more employees.

(7) Receive advance approval from OSHR to administer a bonus program under Retention Bonus Situation 1, Retention Bonus for Positions in Specific Job Classification, that is expected to last more than one year.

- Agencies are required to report annually, to OSHR on the outcome, effectiveness and continued benefit of bonus programs with data and recommendations when the agency would like the retention bonus program to exceed one year.

(8) Receive advance approval from OSBM confirming funds availability for sign-on or retention bonus payouts for groups/teams of **50** or more employees. (See page 4 of this policy above.)

During and after the process for the sign-on or retention bonus, agencies shall:

(9) Timely complete electronic forms related to this policy and enter documented actions into the state's system of record to ensure consistency across agencies and the ability to track agency and statewide metrics.

(10) Ensure that repayments are made as required under Section 6 of this Policy.

Sign-On and Retention Bonus Policy (cont.)

(11) Maintain and report quarterly to OSHR in an electronic format, and upon request:

a) The total amount of the bonus, award date, number of installments, repayment period, and type of all sign-on and retention bonuses granted during the quarter;
b) How many employees, if any, left during the quarter before the end of their periods of consecutive service;
c) For each employee who left before the end of the periods of consecutive service, any amounts that the former employee must repay under Section 6 of this policy, but which has not yet been repaid; and
d) The base line data related to vacancy rates, turnover, retention, recruitment issues, or market conditions for those receiving sign-on or retention bonuses during the quarter.

§ 9. Office of State Human Resources Responsibilities

The Office of State Human Resources shall:

(1) Set the flexibility authorization for agencies.

(2) Monitor the quarterly reports set out above, and when necessary, audit participating agencies' adherence to the Sign-on and Retention Bonus policy.

(3) Review any retention and sign-on bonus request that exceeds an agency's flexibility authorization.

(4) Review information entered into OSHR's system of record, monitor that information, and periodically report to agencies and other stakeholders de-identified summaries of that information, in order to ensure appropriate application across agencies and provide statewide metrics.

(5) Analyze data submitted from participating agencies on the number and type of sign-on or retention bonuses granted during the first six months of the effective date of this policy, then annually review the prior fiscal year, the base line data related to vacancy rates, turnover, retention, recruitment issues, or market conditions for those receiving

Sign-On and Retention Bonus Policy (cont.)

retention bonuses to assess trends and impact of retention bonuses within state government.

(6) Assist agencies with developing plans for administering a sign-on and retention bonus program.

§ 10. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2), (4), (5), and (10)

§ 11. History of This Policy

Date	Version
September 1, 2008	New Policy outlining provisions for implementing a sign-on bonus when such funding is approved by the General Assembly.
December 1, 2016	Revision due to a more defined method in identifying appropriate factors used in determining usage justification within the organization. A more current eligibility description, tracking process for payments and adjusted payout period that matches marketplace. Funding determinant transfer from General Assembly to Office of the State Budget & Management.
April 14, 2022 (effective 06-01-2022)	Added capability for retention bonuses. Adjustments to methods by which agencies can show the need for the bonus.
September 1, 2022	Added text providing that when a bonus is paid in installments, no more than two-thirds of the total bonus may be paid in the first installment. Clarified text about repayment. Clarified that bonuses are not mandatory and not a condition of employment. Added details to reporting.
December 8, 2022 (effective 02-15-2023)	Modified the first retention bonus situation to allow retention bonuses to be provided to a classification without a parallel sign-on bonus. Also modified policy to have the 24-month limitation on bonuses not apply if the retention bonus was less than $2,500. Added requirement for agencies to report to OSHR, in an electronic format, the dates of bonuses and the repayment periods that the agencies set.
April 20, 2023	• On page 2, removed “during a period in which the agency is offering a sign-on bonus as a recruitment incentive to attract qualified candidates” from the description of the first type of retention bonus. This change was made to be consistent with the change made to Retention Bonus Situation 1 in the December 2022 SHRC meeting, which made it optional under Retention Bonus Situation 1 for the agency to be offering a parallel sign-on bonus.

Sign-On and Retention Bonus Policy (cont.)

	• To go along with the existing language reading "A bonus over $2,500 must be paid in at least two installments," a new sentence was added to read, "Bonuses of $2,500 or less may be paid in one installment." See page 10. • Added language to the first bullet in Section 6 to clarify the 90-day minimum between installments is between all installments, not each installment. • Added language to identify what the period of consecutive service is for a bonus paid in one installment. This would be "between 3 months and 18 months, at the agency's discretion." • Added an additional sentence in Section 6 to clearly define that, for a bonus paid in multiple installments, the "period of consecutive service" is the total period of time between the first and last installment.

April 18, 2024	*Changes to strengthen approval requirements:*
	• Added to Retention Bonus Situation 1 (Retention Bonus for Positions in a Specific Job Classification) that agencies must request approval from OSHR, in writing, for any retention bonus programs that:
	  ○ Include a team of 50 or more employees; or
	  ○ Have a program that is expected to last more than one year.
	• Clarified in Retention Bonus Situation 3 (Retention Bonus Tied to a Special Initiative) that OSHR approval should occur prior to the approval by OSBM as required under page 4 of this policy.
	• Added to Section 8, Agency Responsibilities, that agencies must receive advance approval from OSHR to administer a bonus program for a group of 50 or more employees.
	• Added to Section 8, Agency Responsibilities, that agencies must receive advance approval from OSHR to administer a bonus program under Retention Bonus Situation 1, "Retention Bonus for Positions in Specific Job Classifications," that is expected to last more than one year.
	• Added to Section 8, Agency Responsibilities the requirement to report annually to OSHR on the outcome, effectiveness, and continued benefit of bonus programs with data and recommendations when the agency would like the retention bonus program to exceed one year.
	
	Changes to provide additional flexibility for agencies which will be funding the bonus through grant funds that must be paid out within a limited duration of time:

Sign-On and Retention Bonus Policy (cont.)

	• Section 6, in the subsection entitled "Payment of Bonuses," was revised to add an exception when the agency will be funding the bonus through grant funds that must be paid out within a limited period of time. In (and only in) this situation, the agency may pay in one installment a bonus of more than $2,500, or the agency may pay more than two-thirds of the total bonus in the first of multiple installments. In these circumstances, the agency shall seek to use multiple installments to the extent reasonable given the constraints placed on the agency by the grant funding source. • To match this proposed change, Section 6 was revised in the subsection entitled "Period of Consecutive Service." The new language establishes that when the agency is funding the bonus through grant funds that must be paid out within a limited period of time, the agency may set the period of consecutive service to be longer than the time between installments. This alternative period of consecutive service, which must be between 3 and 18 months, must be stated in the repayment agreement. The period of consecutive service cannot be shorter than the time between installments. • Minor conforming changes were made to the portions of Section 6 entitled "Eligibility for the Final Installment" and "Repayment."
May 30, 2024	• Policy is no longer designated as a pilot policy.

Space Heater Use Program Policy

Contents:

PROGRAM: The Statewide Safety and Health Steering Committee created this document to address the unrestricted use of space heaters in facilities that house state workers.

RELATED LEGISLATION

Occupational Safety and Health Standards for General Industry: 29 CFR 1910.1000

Memorandums, Standard of Interpretation, Section III, Chapter 2, Subsection V of the OSHA Technical Manual.

North Carolina Fire Code: 2012 International Fire Code, Section 605.10 through 605.10.4. ; Section 1403.1 through 1403.6 and Section 603.4 through 603.4.2.3.4

§ 1. Program Statement

It is the desire of the North Carolina Office of State Human Resources that space heater use should be a last resort following Heating Ventilating and Air Conditioning (HVAC) personnel attempts to correct heating requirements in a state facility's heating system. Facility heating system modifications should be made where possible to avoid the use of space heaters. Portable space heaters are not intended for use as permanent heating appliances.

§ 2. Purpose and Scope

The purpose of this document is to provide safe guidelines for the use of supplemental heat when, work areas cannot maintain a 68°F to 76°F degree temperature threshold. Unfortunately, with the use of space heaters comes the increased risk of fire and potential injury. Therefore, it is necessary to establish and maintain strict guidelines for

Space Heater Use Program Policy (cont.)

the use of such appliances. The scope of this program covers all N.C. State Government Agencies and UNC System Universities.

§ 3. Definitions

Extension Cord: An electrical cord used to extend the length of a power cord.

HVAC: (heating, ventilation, and air conditioning) is the technology of indoor environmental comfort. HVAC system design is a sub discipline of mechanical engineering, based on the principles of thermodynamics, fluid mechanics, and heat transfer.

Multi-outlet strip: An AC power outlet with numerous receptacles.

Space Heater: An appliance that warms a small area, such as one room, typically by radiant electric or fuel-fired heat. (For the purpose of the Space Heater Use Program, this also includes items such as but not limited to electric blankets, pads, “foot warmers” and similar products that produce heat from an electrical or fuel source.)

Surge Protector: An appliance designed to protect electrical devices from voltage spikes. A surge protector attempts to limit the voltage supplied to an electric device by either blocking or by shorting to ground any unwanted voltages above a safe threshold.

UL Listing: Underwriters Laboratories provided safety-related certification, validation, testing, inspection, auditing, advising and training services to a wide range of clients, including manufacturers, retailers, policymakers, regulators, service companies, and consumers.

Group A: Assembly Occupancies: A building, structure or portion thereof, for the gathering of persons for purposes such as civic, social, or religious functions; food or drink consumption; or awaiting transportation.

Group E: Educational Occupancies: A building, structure or portion thereof, used by six or more persons at any one time for educational purposes through the 12th grade; and for educational, supervision or personal care services for more than five children older than 2.5 years of age.

Group F: Factory Industrial Group F occupancy includes, among others, the use of a building or structure, or portion thereof, for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair or processing operations that are not classified as a Group H high-hazard or Group S storage occupancy

Group H: High-hazard Group H occupancy includes, among others, the use of a building or structure, or a portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard in quantities in excess of those

Space Heater Use Program Policy (cont.)

allowed in controlled areas complying with Section 2703.8.3, based on maximum allowable quantity limits for control areas set forth in tables 2703.1.1(1) and 2703.1.1(2).

Group I: Institutional Occupancies: A building or structure or portion thereof, in which people are cared for or live in a supervised environment, having physical limitations because of health or age, are harbored for medical treatment of other care or treatment, or in which people are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4.

Group M: Mercantile Group M occupancy includes, among others, the use of a building or structure or portion thereof, for the display and sale of merchandise and involves stocks of goods, wares or merchandise incidental to such purpose and accessible to the public.

Group R-1: Residential occupancies containing sleeping units where the occupants are primarily transient in nature.

Group R-2: Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature.

Group R-3: Residential occupancies where the occupants are primarily permanent in nature and are not classified as Groups R-1, R-2, R-4, or I, including: Adult care facilities for five or fewer persons for less than 24 hours. Child care facilities for eight or fewer persons, with no more than five preschool, for less than 24 hours.

Group R-4: Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities, or adult and child day care facilities that provide accommodations in a residence occupied as a home by the caregiver for persons of any age for less than 24 hours, including more than five but not more than sixteen occupants, excluding staff.

Group S: Storage Group S occupancy includes, among others, the use of a building or structure, or a portion thereof, for storage that is not classified as a hazardous occupancy.

§ 4. Employee Responsibility

1. When it is impossible to maintain a suitable working environment (68°F-76ºF), as documented by the HVAC personnel or other qualified person, a space heater can be utilized based on the requirements of this program. The employee seeking to use a space heater must initiate the space heater permit form (See Appendix B) and abide by the following guidelines.

Space Heater Use Program Policy (cont.)

2. For medical conditions requiring supplemental space heating in an otherwise suitable working environment (68°F-76ºF), proper medical documentation from a Licensed Practicing Physician and recommendation for supplemental heat is required prior to approval of space heater use. (See Appendix B)
3. The user of the space heater must follow all manufacturers' operating instructions and requirements.
4. Electrical circuits shall not be overloaded. Do not reset any tripped breakers. Overloaded circuits present a fire hazard. Call Facilities Services for tripped breaker resets.
5. The space heater must contain fully enclosed heating surfaces, be provided with a thermostat, tip over safety shut off, and be listed by an approved listing agency such as Underwriter Laboratories or other accredited listing agent.
6. The user must ensure the space heater is not plugged into an extension cord, multioutlet strip, or surge protector. The space heater must plug directly into an approved 120 volt AC receptacle. Space heaters and their cords shall not be positioned so as to create a tripping hazard in the work area.
7. The employee will ensure that the space heater is turned off when unattended and at the close of business.
8. A minimum three feet area around, in front of, and above the space heater or an area greater as recommended by the manufacturer will be maintained around the space heater as clearance from combustibles. Space heaters shall not be used under desk or other furniture or equipment unless the aforementioned space requirements shall be met.
9. Portable electric space heaters shall not have worn or damaged electrical cords, and the plugs shall be in good condition.
10. Fuel fired space heaters shall be for Non-Office Use Only i.e. garages, warehouses, storage. (See Appendix A) DO NOT use indoors, unless properly ventilated per the Manufacturer's Recommendations/Requirements.
11. Fuel fired space heaters shall be free of any and all leaks.

Space Heater Use Program Policy (cont.)

§ 5. Employer Responsibility

1. Contact the facility HVAC Department to correct heating requirements by the central HVAC system.
2. Install weather stripping or control other sources of cold air and/or drafts.
3. Provide documentation that any and all corrective actions have been taken to maintain a suitable working environment (68°F-76ºF) in the affected work area.
4. Division Director or Designee (Designee must manage the local facility) will ensure this program is followed across the agency.
5. Program Evaluation will be conducted to assure compliance.
6. Space Heaters shall be inspected annually and the need for their continued use reevaluated.

§ 6. Training

Employees shall review and comply with this program. See Appendix A and Appendix B

Space Heater Use Program Policy (cont.)

Appendix A

Section 605 Electrical Equipment, Wiring and Hazards, N.C. Fire Prevention Code, 2012 Edition

605.10 Portable, electric space heaters. Where not prohibited by other sections of this code, portable, electric space heaters shall be permitted to be used in all occupancies other than Group I-2 and in accordance with Sections 605.10.1 through 605.10.4.

Exception: The use of portable, electric space heaters in which the heating element cannot exceed a temperature of 212°F (100°C) shall be permitted in nonsleeping staff and employee areas in Group I-2 occupancies.

605.10.1 Listed and labeled. Only listed and labeled portable, electric space heaters shall be used.

605.10.2 Power supply. Portable, electric space heaters shall be plugged directly into an approved receptacle.

605.10.3 Extension cords. Portable, electric space heaters shall not be plugged into extension cords.

605.10.4 Prohibited areas. Portable, electric space heaters shall not be operated within 3 feet (914 mm) of any combustible materials. Portable, electric space heaters shall be operated only in locations for which they are listed.

Section 1403 Temporary Heating Equipment, N.C. Fire Prevention Code, 2012 Edition

1403.1 Listed. Temporary heating devices shall be listed and labeled in accordance with the International Mechanical Code or the International Fuel Gas Code. Installation, maintenance and use of temporary heating devices shall be in accordance with the terms of the listing.

1403.2 Oil-fired heaters. Oil-fired heaters shall comply with Section 603.

1403.3 LP-gas heaters. Fuel supplies for liquefied-petroleum gas-fired heaters shall comply with Chapter 38 and the International Fuel Gas Code.

1403.4 Refueling. Refueling operations for liquid-fueled equipment or appliances shall be conducted in accordance with Section 3405. The equipment or appliance shall be allowed to cool prior to refueling.

1403.5 Installation. Clearance to combustibles from temporary heating devices shall be maintained in accordance with the labeled equipment. When in operation, temporary heating

Space Heater Use Program Policy (cont.)

devices shall be fixed in place and protected from damage, dislodgement or overturning in accordance with manufacturer's instructions.

1403.6 Supervision. The use of temporary heating devices shall be supervised and maintained only by competent personnel.

Section 603 Fuel-Fired Appliances, N.C. Fire Prevention Code, 2012 Edition

603.4 Portable unvented heaters. Portable unvented fuel-fired heating equipment shall be prohibited in occupancies in Groups A, E, R-1, R-2, R-3 and R-4.

Exceptions:

Listed and approved unvented fuel-fired heaters, including portable outdoor gas-fired heating appliances, in one- and two-family dwellings.

Portable outdoor gas-fired heating appliances shall be allowed in accordance with Section 603.4.2.

603.4.1 Prohibited locations. Unvented fuel-fired heating equipment shall not be located in, or obtain combustion air from, any of the following rooms or spaces: sleeping rooms, bathrooms, toilet rooms or storage closets.

603.4.2 Portable outdoor gas-fired heating appliances. Portable gas-fired heating appliances located outdoors shall be in accordance with Sections 603.4.2.1 through 603.4.2.3.4.

603.4.2.1 Location. Portable outdoor gas-fired heating appliances shall be located in accordance with Sections 603.4.2.1.1 through 603.4.2.1.4.

603.4.2.1.1 Prohibited locations. The storage or use of portable outdoor gas-fired heating appliances is prohibited in any of the following locations:

a. Inside of any occupancy when connected to the fuel gas container.
b. Inside of tents, canopies and membrane structures.
c. On exterior balconies.

Exception: As allowed in Section 6.17 of NFPA 58.

603.4.2.1.2 Clearance to buildings. Portable outdoor gas-fired heating appliances shall be located at least 5 feet (1524 mm) from buildings.

603.4.2.1.3 Clearance to combustible materials. Portable outdoor gas-fired heating appliances shall not be located beneath, or closer than 5 feet (1524 mm) to combustible

Space Heater Use Program Policy (cont.)

decorations and combustible overhangs, awnings, sunshades or similar combustible attachments to buildings.

603.4.2.1.4 Proximity to exits. Portable outdoor gas-fired heating appliances shall not be located within 5 feet (1524 mm) of exits or exit discharges.

603.4.2.2 Installation and operation. Portable outdoor gas-fired heating appliances shall be installed and operated in accordance with Sections 603.4.2.2.1 through 603.4.2.2.4.

603.4.2.2.1 Listing and approval. Only listed and approved portable outdoor gas-fired heating appliances utilizing a fuel gas container that is integral to the appliance shall be used.

603.4.2.2.2 Installation and maintenance. Portable outdoor gas-fired heating appliances shall be installed and maintained in accordance with the manufacturer's instructions.

603.4.2.2.3 Tip-over switch. Portable outdoor gas-fired heating appliances shall be equipped with a tilt or tip-over switch that automatically shuts off the flow of gas if the appliance is tilted more than 15 degrees (0.26 rad) from the vertical.

603.4.2.2.4 Guard against contact. The heating element or combustion chamber of portable outdoor gas-fired heating appliances shall be permanently guarded so as to prevent accidental contact by persons or material.

603.4.2.3 Gas containers. Fuel gas containers for portable outdoor gas-fired heating appliances shall comply with Sections 603.4.2.3.1 through 603.4.2.3.4.

603.4.2.3.1 Only approved DOTn or ASME gas containers shall be used.

603.4.2.3.2 Replacement of fuel gas containers in portable outdoor gas-fired heating appliances shall not be conducted while the public is present.

603.4.2.3.3 The maximum individual capacity of gas containers used in connection with portable outdoor gas-fired heating appliances shall not exceed 20 pounds (9 kg).

603.4.2.3.4 Indoor storage prohibited. Gas containers shall not be stored inside of buildings except in accordance with Chapter 38.

Space Heater Use Program Policy (cont.)

Appendix B

North Carolina State Government

Space Heater Use Permit and/or

Annual Medical Authorization Form

Facility/Campus Name _____Date of Request_____

Applicant's Name _____

Applicant's Email Address _____

Room Number _____ Appliance Type & Size _____

Appliance Model Number_____

Applicant Signature _____

Supervisor's Signature _____

Safety Representative Signature_____

Facility Maintenance or Electrical Representative verifying circuits will handle the appliance and auto shut off device is operating.

Maintenance Representative_____

Medical Authorization Section (For Medically Required uses, Annual Review Required)

This permit section is not valid unless it is fully completed and signed by a licensed healthcare provider.

I confer that the employee has a medical condition and requires additional heating. By signing this document, I conclude that the addition of heating is not a preference but due to a medical condition outside the control of the employee.

The employee is responsible for purchasing the heating device and following the requirements of this program.

Dr's Practice and Address_____

Dr's Name Printed_____

Dr's Signature_____

Space Heater Use Program Policy (cont.)

§ 7. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(10); Chapter 143 – Article 63

§ 8. History of This Policy

Date	Version
March 6, 2019	• First version.

STATE OF NORTH CAROLINA
OFFICE OF STATE PERSONNEL
1331 MAIL SERVICE CENTER • RALEIGH, NC 27699-1331

PAT MCCRORY
GOVERNOR

C. NEAL ALEXANDER, JR.
STATE PERSONNEL DIRECTOR

July 30, 2013

MEMORANDUM

TO: Agency and University HR Directors

FROM: C. Neal Alexander, Jr.

SUBJECT: 2013-2014 Special Leave

On July 26, 2013, the North Carolina General Assembly ratified Senate Bill 402 (Session Law 2013-15), which grants a one-time additional five days of special vacation leave effective July 1, 2013, to permanent full-time employees of the State. Part-time permanent employees shall be granted a pro-rata amount of the five days. Attached is a copy of the 2013-2014 Special Leave Policy, which outlines the provisions for administering this leave benefit.

The policy provisions are the same as the 2012-2013 Special Leave Policy. The policy allows each state employee to choose when the additional five days of leave (or pro-rated amount) is used from July 1, 2013 through June 30, 2014.

Agencies and universities are responsible for notifying employees and supervisors about the FY 2013-2014 special leave policy, and for training supervisors on how to administer the special leave. Since the leave will be forfeited if not used by June 30, 2014, please ensure employees are aware of this expiration date. Managers and supervisors should make every effort to allow employees to use the additional leave before the June 30, 2014 expiration date.

A link to the special leave policy will be available this week from the 'News' box on the main page of the OSP Website at http://www.osp.state.nc.us/.

If you have any questions, please contact Shari Howard at 919-807-4800.

State Employee Memorial Program Policy

Contents:

§ 1. Policy

The State of North Carolina values the lives of its employees and their contributions to the achievements of their agency and the well-being of all North Carolinians. At times, active duty, career status employees may lose their lives due to work-related cause(s) or a condition or experience unrelated to their employment. Agencies may honor deceased employees and their service to the state by providing a State flag and a formal letter of condolence to survivor(s) from their Agency Head.

§ 2. Eligibility Criteria

Active duty, career status employees that lose their lives due to work-related causes or a condition or experience unrelated to their employment.

§ 3. Program Administration

Each state agency may elect to participate in the State Employee Memorial Program and is responsible for all costs associated with utilization of its provisions. Each state agency should be consistent in its use of the State Employee Memorial Program with regards to death of any active duty, career status employee for death due to work-related causes or a condition or experience unrelated to their employment. However, in all instances, including when an employee's death is contributed to in some way by the employee's intentional or negligent actions, the state agency, Governor's office and the Office of State Human Resources (OSHR) each individually determine whether to recognize the employee's death in any manner.

State Employee Memorial Program Policy

§ 4. Responsibilities

§ 4.1. Office of State Human Resources Responsibilities

OSHR State Employee Memorial Program Coordinator will provide consultation and technical assistance to agencies/universities concerning proper administration of this program.

The OSHR Director may provide a condolence letter for the survivor(s) of the deceased eligible employee upon request from the agency. A condolence letter from the OSHR is not intended to indicate the cause of death was due to a work related cause.

§ 4.2. Office of the Governor Responsibilities

The Office of the Governor may provide a condolence letter from Governor for the survivor(s) of the deceased eligible employee upon request from the agency. A condolence letter from the Office of the Governor is not intended to indicate the cause of death was due to a work related cause.

§ 4.3. Department of Administration (DOA) -- Facility Management Responsibilities

DOA Facility Management will provide a state flag ordered by agency using State Flag Order Form in timely manner for agency presentation to deceased employee's survivor.

§ 4.4. Agency Responsibilities

An agency employee will serve as State Employee Memorial Coordinator to carry out the program at the agency level. The agency State Employee Memorial Coordinator will, upon direction of the agency Human Resources Director:

- Provide completed State Employee Memorial Program Information Form to the agency human resources director, the agency Communications director and the Communications Director for the Office of the Governor and Communications Director for the OSHR requesting preparation of condolence letters.
- Send completed DOA Facilities Management State Flag Order Form requesting a state flag that has been flown over the State Capitol.
- Once state flag is obtained, agency shall select staff member(s) to present flag to survivor(s) prior to or at a planned memorial service or visit.

State Employee Memorial Program Policy

§ 5. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(15);

It is compliant with the Administrative Code rules at:

- 25 NCAC 01C .0900

§ 6. History

Date	Version
November 1, 2000	• New memorial program to honor employees who have lost their lives in the line of duty.
August 4, 2016	• Deleted annual memorial event since it had not been done since 2004. It was not funded and has not been deemed necessary.
August 6, 2020	Policy reviewed by Deputy Director – Recruitment and Rewards Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on August 6, 2020. • Deleted annual memorial event since it has not occurred since 2004 – it was not funded and deemed unnecessary. • Deleted language requiring OSHR to obtain flags and letters of condolence for state agency when employee death occurs. • Revised language to include agency determination of recognition of individual active duty, career status employee deaths that occur for any reason, not just at work. • Revised language to provide that an agency may request a letter of condolence from Office of the Governor and Office of State Human Resources and State flag flown over the State Capitol when agency determines that a compensable workers' compensation claim exists related to the employee's death "in the line of duty." • Revised language to provide that an agency may request a letter of condolence from agency leadership and a State flag when the employee's death is not "in the line of duty."

State Employee Memorial Program Policy

July 14, 2022	• Revised language to provide that an agency may request a letter of condolence from the Office of the Governor and the Office of State Human Resources regardless of cause of death. Also revises policy so that Office of the Governor and Office of State Human Resources have discretion when to issue letter of condolence.

State Human Resources Commission Policy

Contents:

§ 1. Purpose

The State Human Resources Commission (the "Commission") was established in July 1965. It is created under the North Carolina Human Resources Act, Chapter 126 of the General Statutes. The purpose of the State Human Resources Act is "to establish "for the Government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry." N.C.G.S. § 126-1.

State Human Resources Commission Policy

§ 2. Duties of State Human Resources Commission

The Commission, with the approval of the Governor, establishes policies and rules governing the areas outlined in N.C.G.S. § 126-4.

§ 3. Membership

The nine members of the Commission are appointed for four-year terms by the Governor and the General Assembly. The composition of the Commission is as follows:

(1) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who shall be an attorney licensed to practice law in North Carolina.

(2) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who shall be an attorney licensed to practice law in North Carolina.

(3) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who shall be from private business or industry and who shall have a working knowledge of, or practical experience in human resources management.

(4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who shall be from private business or industry and who shall have a working knowledge of, or practical experience in, human resources management.

(5) One member who is a veteran of the Armed Forces of the United States appointed by the Governor upon the nomination of the Veterans' Affairs Commission and who is a State employee subject to the State Human Resources Act serving in a nonexempt supervisory position. The member may not be a human resources professional.

(6) One member appointed by the Governor who is a State employee subject to the State Human Resources Act serving in a nonexempt nonsupervisory position. The member may not be a human resources professional. The Governor shall consider nominations submitted by the State Employees Association of North Carolina.

(7) One member appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners who is a local government employee

subject to the State Human Resources Act serving in a supervisory position. The member may not be a human resources professional.

(8) One member appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners who is a local government employee subject to the State Human Resources Act serving in a nonsupervisory position. The member may not be a human resources professional.

(9) One member of the public at large appointed by the Governor.

These requirements are stated in N.C.G.S. § 126-2. A list of current Commission members can be found at https://oshr.nc.gov/about-oshr/state-hr-commission/list-commissioners .

§ 4. Mail to Commission

Mail addressed to the Commission may be sent to the Administrator, State Human Resources Commission, 1331 Mail Service Center, Raleigh, N.C. 27699-1331.

§ 5. Process Agent for Commission

The General Counsel of the Office of State Human Resources ("OSHR"), is the agent for service of legal process on the Commission. Legal process may be served by directing mail to the General Counsel at 1331 Mail Service Center, Raleigh, N.C. 27699-1331 or by delivery addressed to the OSHR General Counsel at 116 West Jones Street, Raleigh, NC 27603.

§ 6. Notice of Meetings

In accordance with N.C.G.S. Chapter 143, Article 33C (the Open Meetings Law) and Chapter 150B (the Administrative Procedure Act), the Administrator shall be responsible for the timely issuance of any applicable notices to those parties who, pursuant to the Act, must be given legal notice of Commission meetings, hearings, decisions and official actions.

State Human Resources Commission Policy

§ 7. When Meetings are Held

Pursuant to N.C.G.S. § 126-2(h), the Commission meets quarterly, and at other times at the call of the chair. The dates are generally set in advance of the coming calendar year, but may be changed as the year progresses. A copy of the Commission's scheduled meetings may be obtained by contacting the Administrator, State Human Resources Commission, 1331 Mail Service Center, Raleigh, N.C. 27699-1331. Any person or organization wishing to be given advanced notice of any Commission meeting may request such notification by writing to: Administrator, State Human Resources Commission, 1331 Mail Service Center, Raleigh, N.C. 27699-1331. The request must include the name, address, and telephone number of a contact person.

§ 8. Where Meetings are Held

Meetings of the Commission are held at 101 West Peace Street, Raleigh, N. C., unless otherwise specified. Meetings may be held entirely by remote means. Unless otherwise specified, a meeting of the Commission consists of public hearings, reading of minutes, and business session. If a contested case is heard by the Commission, the meeting will also include oral presentations by contested case parties and an executive session.

§ 9. Meetings are Public

Meetings of the Commission, except for any executive sessions, are open to the public. Except for the public comment period, only Commissioners, staff of OSHR, and other persons specifically invited to participate by the Chair may take part in the business session portion of the meeting. At the beginning of the business session, public comments may be taken from individuals who have signed up in advance.

§ 10. Public Comments or Public Hearings

Persons wishing to speak at the public comment (or, if applicable, public hearing) portion of the Commission meeting should sign up in advance by notifying the State Human Resources Commission Administrator, either in writing or by telephone at (919) 807-4800. Persons may also sign up on the day of the meeting. Presentations to the Commission shall

be limited to no more than 3 minutes per speaker, unless extended by a vote of the Commission.

Any person wishing to present written material to the Commission should submit fifteen (15) copies to be distributed by the Commission Administrator.

§ 11. Decisions of the Commission

All decisions of the Commission, except those relating to employee grievances, are rendered in open session. Decisions of the Commission involving employee grievances are reached in executive session and communicated in writing. Information relating to such decisions will not be released publicly until the Administrator to the Commission has received notice that each party has received a copy of the Commission's decision.

§ 12. Motions

Motions may be made by any member of the Commission, including the Chair. For further action to be taken, the motion made must be seconded by at least one other Commissioner other than the member who made the motion. A motion which is not seconded after two calls for seconds by the Chair shall die and not be acted upon. A motion which was properly seconded shall be discussed to the extent the Commission desires before any vote is taken. A vote may be taken only after all discussion has been concluded. The Chair may close discussion, at his or her discretion, and call for a vote. Minutes of the Commission will reflect the name of the commissioner making the motion and the name(s) of the commissioner(s) seconding the motion.

§ 13. Voting and Quorum

At the appropriate time a properly seconded motion shall be voted on by the members of the Commission present. All members present, including the Chair, must either vote or abstain. All votes shall be voice votes, unless otherwise decided by the Commission, with AYE signifying agreement with the motion and NAY signifying disagreement with the motion. If the meeting is held remotely by electronic means, votes should be held by roll call, and Commissioners should identify themselves by name when making a motion (for example, by saying "Commissioner Doe seconds"). If the meeting is held in-person and not by electronic means, any member, including the Chair, may ask that a vote be taken by raising hands, so that a definite count of the vote may be taken. Minutes of the Commission

will reflect the vote taken on each motion and the outcome of the vote. The minutes will also reflect the names of each Commissioner with his vote if voting is done by hand. Any Commissioner abstaining from a vote will be so indicated in the minutes. A quorum of the nine-member Commission shall be five members. A majority of the quorum approves a motion. If there is a tie vote, the motion fails.

§ 14. Minutes of Meeting

Minutes and other records of all Commission meetings shall be kept under the direction of the Commission Administrator. Minutes shall be maintained in the Office of the State Human Resources Commission permanently.

§ 15. Conflict of Interest

A Commissioner who has any conflict of interest, either actual or potential as defined in Chapter 138A-1, the State Government Ethics Act, shall voluntarily abstain from taking any part in any action before the Commission. This abstention shall include, but is not limited to, refraining from discussion in the public or business session, making of or seconding of motions, and voting. A Commissioner who is abstaining from an action the Commission is considering should announce such abstention at the earliest possible time in the public or business session — ideally at the time of the Ethics Statement that begins each meeting — and prior to any discussion or vote on the action.

All members of the Commission will provide statements of economic interest to the State Ethics Commission in the time and fashion required by that Board.

§ 16. Duties of the Chair

The Chair shall be authorized to perform at least the following duties and responsibilities at each meeting of the Commission:

- Call the meeting to order,
- Make opening remarks as deemed necessary,
- Introduce each portion of the meeting and make whatever remarks deemed necessary as part of the introduction,
- May extend or limit, on his own or upon the vote of the Commission, the time allotted for a speaker making a presentation to the Commission,

- Call for motions, seconds, discussion and votes as appropriate,
- Call for a recess or meal period as appropriate,
- Call for the adjournment of the opening portion of the meeting and to begin the executive portion of the meeting,
- Call for the adjournment of each meeting, and
- The Chair may direct the removal of individuals from Commission meetings for disruptive conduct or failure to comply with Commission rules.

The Chair shall have the authority to exercise such other responsibilities not enumerated above which are necessary to the performance of the business of the Commission.

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§ 17. Types of Policies

Unless the policy text indicates otherwise, a Commission policy is permanent and applies to all State agency employees who are subject to the portions of the State Human Resources Act that are on the topic of that policy. Some Commission policies may be labeled in special ways. Specifically:

§ 17.1. Opt-In Policies.

These policies apply automatically to Cabinet agencies, but apply to non-Cabinet agencies only if those non-Cabinet agencies choose to join the policy. OSHR will mark these as “Opt-In Policies” on the Commission policies webpage and in the State Human Resources Manual. OSHR will identify these policies in a way that highlights that the policy may not apply to employees of non-Cabinet agencies.

§ 17.2. Pilot Program Policies.

The term “pilot” will refer to Commission policies that are intended to be initial efforts to develop a policy on a new topic, with the expectation that the policy will return to the Commission in the future for revisions once lessons are learned. These policies may sometimes be applicable only to certain types of employees or types of agencies. Pilot policies do not automatically expire unless the policy text states otherwise.

State Human Resources Commission Policy

§ 18. Procedures for Presenting Employee Grievances to the Commission

OSHR is responsible for the administrative management of contested cases coming before the Commission for its review and decision.

§ 18.1. Record Submission to the Commission.

The Commission Administrator, on behalf of the Commission, shall receive the record in the contested cases and the Commission shall make a final decision in the case based on the submitted record of the grievance, including the grievance hearing. The Commission shall have 90 days from the date of the first regularly scheduled meeting after the Administration has received the record. If a record of an employee grievance is received by the Administrator on the day of a Commission meeting, the record is deemed to have been received after the Commission meeting and the time in which the Commission has to review and decide the case shall run from the Commission meeting.

§ 18.2. Oral Argument.

Either party to a contested case may request the opportunity to appear before the Commission and make oral argument in all cases. Such arguments shall be based solely on the information contained in the record submitted to the Commission. Oral arguments shall be requested or waived in writing no more than 10 calendar days after the filing date of the recommended decision and the parties shall attach a copy of the decision to the request or waiver. After the Commission has received either a request or waiver of oral argument from the parties, the Commission shall send a notice of review which shall contain the date, time and place of the Commission meeting at which the case will be reviewed. If a party has failed to request or waive oral argument in a timely fashion, that party will not be allowed to present oral argument to the Commission. Each party requesting oral argument shall be allotted a maximum of 10 minutes for the presentation, unless the time period is extended by a vote of the Commission. Time may be extended by the Commission if the Commission determines that additional time for oral argument is necessary for the Commission to have a sufficient understanding of the issues before the Commission. All requests to speak for more than 10 minutes shall be made in writing in the same document that requests the opportunity to make oral argument. The party that did not prevail in the recommended decision is entitled to make the first oral argument and to present a rebuttal. If both parties

are seeking changes in the Administrative Law Judge's decision, both parties may present a rebuttal and the party with the burden of proof in the contested case is entitled to the last rebuttal.

§ 18.3. Briefs and Memoranda with Written Exceptions and Proposed Alternative Decisions.

All briefs or memoranda, with written exceptions and proposed alternative findings of fact and conclusions of law, shall be received by OSHR no later than 30 calendar days after the date of the recommended decision. The document shall also be served upon the opposing party and a copy of the recommended decision shall be attached to the document. Documents received after the deadline shall be presented to the Commission only with the permission of the Commission. Each proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, the specific reason(s) the Commission should not adopt the finding of fact or conclusion of law, and the specific evidence in the record which supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the recommended decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail. Reference must be made to the transcript (and volumes, where applicable), if the transcript of the hearing was made and is available. Where a party excepts or objects to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion, or recommendation shall be made.

§ 18.4. Service on Opposing Parties.

Copies of all documents permitted or required by this policy shall be served on the opposing party. If a document is filed electronically with the Commission as permitted by this policy, the document must also be served electronically on the opposing party if the opposing party has an electronic address. Electronic service must be followed by service of

printed copies of any document filed electronically within 24 hours of electronic filing. Any documents that are required or permitted to be filed under this policy, may be filed electronically by midnight of the filing date with the Commission Administrator in a format readable by the Administrator. Printed copies of any documents filed electronically must also be served on the Administrator within 24 hours of electronic filing.

§ 18.5. Attorney's Fees Requests.

Attorney's fees requests must be presented to the Commission by the prevailing party to a Commission Decision and Order at least one month before the meeting at which the matter is to be considered. Such requests must also be served upon the opposing party. The Commission shall notify the parties upon receipt of a request for attorney's fees and provide an opportunity for the opposing party to file objections to the fees requested. If the parties wish to make oral argument on an attorney's fees request, a request for oral argument must be received by OSHR within two weeks after the filing of the attorney's fees request and at least one month prior to the meeting at which such oral argument is requested.

§ 18.6. Notification of the Commission's Decision.

The parties or the legal representative of record for a party, shall be notified by electronic mail and by regular mail of the Commission's decision. The Commission's decision shall be prepared and sent out by the Administrator to the Commission.

§ 19. Settlement Agreements

Any settlement agreement in a grievance or contested case that requires the entering of data into human resources and payroll information system used by agencies or universities with employees subject to the State Human Resources Act, and which arises solely under Chapter 126, must be approved by the Office of State Human Resources for compliance with the Commission's rules and policies before the agency or university enters the data.

Data is required to be entered into the human resources and payroll information system by an agency when it determines that an action must be taken that affects

classification, salary, leave, demotion, reassignment, transfer, or for any other human resources action, with the exceptions noted below.

Approval by the Office of State Human Resources shall be indicated by the signature of the State Human Resources Director or the Director's designee in an appropriate place on the settlement or consent agreement or otherwise.

The controller of the human resources and payroll information system of each agency and university shall not process any agreement required to be approved under the Policy that has not been approved.

§ 19.1. Exception to OSHR Approval Process.

This provision shall not be construed to require Office of State Human Resources approval of the following:

- a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Human Resources Commission.
- a settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.
- a settlement in which federal claims or State claims other than those arising under Chapter 126 (the State Human Resources Act) arise.

§ 19.2. Exception to Rules or Policies.

The provisions of 25 NCAC 01A .0104 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from the policies or rules approved by the Commission. Settlement agreements that require an exception or a variance shall be reported to the Commission in accordance with the above rule.

§ 20. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

State Human Resources Commission Policy

§ 21. History of This Policy

Date	Version
December, 1998	First version in records. Quorum set at six of the nine State Personnel Commission members.
February, 2002	List of Commissioners updated.
October, 2005	List of Commissioners updated.
October, 2006	Update to Commission membership, meeting schedule, and registered agent.
July, 2007	Update to Commission membership.
June, 2008	List of Commissioners updated.
February, 2010	List of Commissioners updated.
May, 2015	Quorum set at five of the nine Commission members. Updates to Commission membership, meeting schedule, and registered agent. Added references to State Ethics Act and Ethics Commission. Added procedures for presenting to the Commission contested cases arising out of employee grievances. Added procedures for reviewing settlement agreements. Name of policy revised to reflect the Commission's new name: the "State Human Resources Commission."
July 14, 2022	New text on "opt-in" and "pilot" types of Commission policies. Clarified that a majority vote of the Commission is a majority of the quorum. Updates to meeting schedule and process agent. Minor updates to text throughout the document.

Chapter 126.

North Carolina Human Resources Act.

Article 1.

State Human Resources System Established.

§ 126-1. Purpose of Chapter; application to local employees.

It is the intent and purpose of this Chapter to establish for the government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry. It is also the intent of this Chapter that this system of personnel administration shall apply to local employees paid entirely or in part from federal funds, except to the extent that local governing boards are authorized by this Chapter to establish local rules, local pay plans, and local personnel systems. It is also the intent of this Chapter to make provisions for a decentralized system of personnel administration, where appropriate, and without additional cost to the State, with the State Human Resources Commission as the policy and rule-making body. The Office of State Human Resources shall make recommendations for policies and rules to the Commission based on research and study in the field of personnel management, develop and administer statewide standards and criteria for good personnel management, provide training and technical assistance to all agencies, departments, and institutions, provide oversight, which includes conducting audits to monitor compliance with established State Human Resources Commission policies and rules, administer a system for implementing necessary corrective actions when the rule, standards, or criteria are not met, and serve as the central repository for State Human Resources system data. The agency, department, and institution heads shall be responsible and accountable for execution of Commission policies and rules for their employees. (1965, c. 640, s. 2; 1997-349, s. 1; 2013-382, s. 9.1(c); 2014-115, s. 55.4(c).)

§ 126-1.1. Career State employee defined.

(a) For the purposes of this Chapter, unless the context clearly indicates otherwise, "career State employee" means a State employee or an employee of a local entity who is covered by this Chapter pursuant to G.S. 126-5(a)(2) who:

(1) Is in a permanent position with a permanent appointment, and

(2) Has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the North Carolina Human Resources Act for the immediate 12 preceding months.

(b) As used in this Chapter, "probationary State employee" means a State employee who is in a probationary appointment and is exempt from the provisions of the North Carolina Human Resources Act only because the employee has not been continuously employed by the State for the time period required by subsection (a) or (c) of this section.

(c) Notwithstanding the provisions of subsection (a) above, employees who are hired by a State agency, department or university in a sworn law enforcement position or forensic scientist position and who are required to complete a formal training program prior to assuming law enforcement or forensic scientist duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months. (1995, c. 141, s. 1; 2007-372, s. 1; 2013-382, ss. 3.1, 9.1(c); 2015-260, s. 1; 2016-87, s. 7.)

§ 126-1A: Repealed by Session Laws 1995, c. 141, s. 2.

§ 126-2. State Human Resources Commission.

(a) There is hereby established the State Human Resources Commission (hereinafter referred to as "the Commission").

(b) Repealed by Session Laws 2013-382, s. 2.1, effective August 21, 2013.

(b1) The Commission shall consist of nine members, appointed as follows:

(1) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who shall be an attorney licensed to practice law in North Carolina.

(2) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who shall be an attorney licensed to practice law in North Carolina.

(3) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who shall be from private business or industry and who shall have a working knowledge of, or practical experience in, human resources management.

(4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who shall be from private business or industry and who shall have a working knowledge of, or practical experience in, human resources management.

(5) One member who is a veteran of the Armed Forces of the United States appointed by the Governor upon the nomination of the Veterans' Affairs Commission and who is a State employee subject to this Chapter serving in a nonexempt supervisory position. The member may not be a human resources professional.

(6) One member appointed by the Governor who is a State employee subject to this Chapter serving in a nonexempt nonsupervisory position. The member may not be a human resources professional. The Governor shall consider nominations submitted by the State Employees Association of North Carolina.

(7) One member appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners who is a local government employee subject to this Chapter serving in a supervisory position. The member may not be a human resources professional.

(8) One member appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners who is a local government employee subject to this Chapter serving in a nonsupervisory position. The member may not be a human resources professional.

(9) One member of the public at large appointed by the Governor.

(c) Each member of the Commission shall be appointed for a term of four years. Members of the Commission may serve no more than two consecutive terms. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Vacancies in appointments made by the Governor occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(d) No member of the Commission may serve on a case where there would be a conflict of interest. The appointing authority may at any time remove any Commission member for cause.

(e) Members of the Commission who are State or local government employees subject to this Chapter shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Commission.

(f) Five members of the Commission shall constitute a quorum.

(g) The Governor shall designate one member of the Commission as chair.

(h) The Commission shall meet quarterly, and at other times at the call of the chair. (1965, c. 640, s. 2; 1975, c. 667, ss. 2-4; 1989, c. 540; 1998-181, s. 1(a), (b); 2000-140, s. 29; 2007-287, s. 1; 2011-183, s. 90; 2013-382, ss. 2.1, 9.1(c); 2015-241, s. 24.1(u); 2015-268, s. 7.3(a).)

§ 126-3. Office of State Human Resources established and responsibilities outlined; administration and supervision; appointment, compensation and tenure of Director.

(a) There is hereby established the Office of State Human Resources (hereinafter referred to as "the Office") which shall be placed for organizational purposes within the Office of the Governor. Notwithstanding the provisions of North Carolina State government reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws, Chapter 143A of the General Statutes, the Office of State Human Resources shall exercise all of its statutory powers in this Chapter, which shall be under the administration and supervision of a Director of the Office of State Human Resources (hereinafter referred to as "the Director") appointed by the Governor and subject to the supervision of the Commission for purposes of this Chapter. The salary of the Director shall be fixed by the Governor. The Director shall serve at the pleasure of the Governor.

(b) The Office shall be responsible for the following activities, and such other activities as specified in this Chapter:

(1) Providing policy and rule development for the Commission and implementing and administering all policies, rules, and procedures established by the Commission.

(2) Providing training in personnel management to agencies, departments, and institutions including train-the-trainer programs for those agencies, departments, and institutions who request such training and where sufficient staff and expertise exist to provide the training within their respective agencies, departments, and institutions.

(3) Providing technical assistance in the management of personnel programs and activities to agencies, departments, and institutions.

(4) Negotiating decentralization agreements with all agencies, departments, and institutions where it is cost-effective to include delegation of authority for certain classification and corresponding salary administration actions and other personnel programs to be specified in the agreements.

(5) Administering such centralized programs and providing services as approved by the Commission which have not been transferred to agencies, departments, and institutions or where this authority has been rescinded for noncompliance.

(6) Providing approval authority of personnel actions involving classification and compensation where such approval authority has not been transferred by the Commission to agencies, departments, and institutions or where such authority has been rescinded for noncompliance.

(7) Maintaining a computer database of all relevant and necessary information on employees and positions within agencies, departments, and institutions in the State's personnel system.

(8) Developing criteria and standards to measure the level of compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards in agencies, departments, and institutions to which authority has been delegated for classification, salary administration, performance management, development, evaluation, and other decentralized programs, and determining through routine monitoring and periodic review process, that agencies, departments, and institutions are in compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards.

(9) Implementing corrective actions in cases of noncompliance.

(10) Repealed by Session Laws 2021-180, s. 20.13(b), effective July 1, 2021. (1965, c. 640, s. 2; 1975, c. 667, s. 5; 1983, c. 717, s. 40; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1997-349, s. 2; 2011-224, s. 5; 2012-142, s. 25.1(c); 2012-194, s. 25; 2013-382, ss. 1.1, 1.2, 9.1(c); 2021-180, s. 20.13(b).)

§ 126-4. Powers and duties of State Human Resources Commission.

Subject to the approval of the Governor, the State Human Resources Commission shall establish policies and rules governing each of the following:

(1) Position classification plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.

(4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 12 paid holidays per year, with three paid holidays being given for Christmas.

(5a) In years in which New Year's Day falls on Saturday, the Commission may designate December 31 of the previous calendar year as the New Year's holiday, provided that the number of holidays for the previous calendar year does not exceed 12 and the number of holidays for the current year does not exceed 10. When New Year's Day falls on either Saturday or Sunday, the constituent institutions of The University of North Carolina that adopt alternative dates to

recognize the legal public holidays set forth in subdivision (5) of this section and established by the Commission may designate, in accordance with the rules of the Commission and the requirements of this subdivision, December 31 of the previous calendar year as the New Year's holiday.

(5b) A leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month.

(6) The appointment, promotion, transfer, demotion and suspension of employees.

(7) Cooperation with the State Board of Education, the Department of Public Instruction, the University of North Carolina, and the Community Colleges of the State and other appropriate resources in developing programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.

(7a) The separation of employees.

(8) A program of meritorious service awards.

(9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.

(10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration.

(11) In cases where the Commission finds discrimination, harassment, or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

(12) Repealed by Session Laws 1987, c. 320, s. 2.

(13) Repealed by Session Laws 1987, c. 320, s. 3.

(14) The implementation of G.S. 126-5(e).

(15) Recognition of State employees, public personnel management, and management excellence.

(16) The implementation of G.S. 126-7.

(17) An alternative dispute resolution procedure.

(18) Delegation of authority for approval of personnel actions through decentralization agreements with the heads of State agencies, departments, and institutions.

a. Decentralization agreements with Executive Branch agencies shall require a person, designated in the agency, to be accountable to the Director of the Office of State Human Resources for the compliance of all personnel actions taken pursuant to the delegated authority of the

agency. Such agreements shall specify the required rules and standards for agency personnel administration.

b. The Director of the Office of State Human Resources shall have the authority to take appropriate corrective actions including adjusting employee salaries and changing employee classifications that are not in compliance with policy or standards and to suspend decentralization agreements for agency noncompliance with the required personnel administration standards.

(19) The implementation of G.S. 126-6.3 in a manner that is consistent across all affected State agencies.

The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in the department head's discretion and upon the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter. (1965, c. 640, s. 2; 1971, c. 1244, s. 14; 1975, c. 667, ss. 6, 7; 1977, c. 288, s. 1; c. 866, ss. 1, 17, 20; 1985, c. 617, ss. 2, 3; c. 791, s. 50(b); 1985 (Reg. Sess., 1986), c. 1028, s. 6; 1987, c. 25, s. 2; c. 320, ss. 1-3; 1991, c. 65, s. 1; c. 354, s. 2; c. 750, s. 1; 1991 (Reg. Sess., 1992), c. 994, s. 2; 1993, c. 388, s. 2; c. 522, s. 10; 1995, c. 141, s. 4; 1997-349, s. 3; 1998-135, s. 1; 2013-360, s. 9.1; 2013-382, ss. 1.3, 9.1(c); 2015-241, s. 26.2(f); 2015-260, s. 2.)

§ 126-4.1: Repealed by Session Laws 2011-398, s. 41, effective January 1, 2012, and applicable to contested cases commenced on or after that date.

§ 126-5. Employees subject to Chapter; exemptions.

(a) This Chapter applies to all of the following:

(1) All State employees not exempted by this section.

(2) All employees of the following local entities:

a. Area mental health, developmental disabilities, and substance abuse authorities, except as otherwise provided in Chapter 122C of the General Statutes.

b. Local social services departments.

c. County health departments and district health departments.

d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) The following definitions apply in this section:

(1) Recodified as subdivision (b)(3a) of this section by Session Laws 2022-62, s. 58(a), effective July 8, 2022.

(2) Exempt managerial position. – A position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of G.S. 126-35 to

an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.

(3) Exempt policymaking position. – A position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division, so that a loyalty to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term does not include personnel professionals.

(3a) Exempt position. – An exempt managerial position or an exempt policymaking position.

(4) Personnel professional. – Any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), and 126-4(6), and except as to Articles 6 and 7 of this Chapter, this Chapter does not apply to any of the following:

(1) A State employee who is not a career State employee as defined by this Chapter.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in exempt policymaking positions designated pursuant to subsection (d) of this section.

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of the department head during the department head's absence or incapacity.

(c1) Except as to Articles 6 and 7 of this Chapter, this Chapter does not apply to any of the following:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(2a) Deputy commissioners appointed pursuant to G.S. 97-79.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in the Governor's discretion, exempts from the application of this Chapter by means of a letter to the Director of the Office of State Human Resources designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in the Lieutenant Governor's discretion, exempts from the application of this Chapter by means of a letter to the Director of the Office of State Human Resources designating these employees.

(8) Instructional and research staff, finance professionals, business office professionals, auditor professionals, information technology professionals, physicians, and dentists of The University of North Carolina, including the faculty of the North Carolina School of Science and Mathematics.

(8a) Employees of a regional school established pursuant to Part 10 of Article 16 of Chapter 115C of the General Statutes.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(9a) Employees of the North Carolina Cooperative Extension Service of North Carolina State University who are employed in county operations and who are not exempt pursuant to subdivision (8) or (9) of this subsection.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) Repealed by Session Laws 2006-66, s. 9.11(z), effective July 1, 2007.

(12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.

(14) Employees of the North Carolina State Ports Authority.

(15) Employees of the North Carolina Global TransPark Authority.

(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

(17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.

(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.

(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.

(20) Repealed by Session Laws 2008-134, s. 73(d), effective July 28, 2008.

(21) Repealed by Session Laws 2019-32, s. 1(b), effective July 1, 2019.

(22) Employees of the North Carolina Turnpike Authority.

(23) The Executive Administrator of the State Health Plan for Teachers and State Employees.

(24) Employees of the State Health Plan for Teachers and State Employees as designated by law or by the Executive Administrator of the Plan.

(25) The North Carolina State Lottery Director and employees of the North Carolina State Lottery.

(26) Repealed by Session Laws 2011-145, s. 7.31(c), as added by Session Laws 2011-391, s. 17, and by Session Laws 2011-266, s. 1.37(c), effective July 1, 2011.

(27) The Chief Administrative Law Judge of the Office of Administrative Hearings and five employees of the Office of Administrative Hearings as designated by the Chief Administrative Law Judge.

(28) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission.

(29) The Executive Director, Deputy Director, all other directors, assistant and associate directors, and center fellows of the North Carolina Center for the Advancement of Teaching.

(30) Employees of the Department of Commerce employed in the Rural Economic Development Division.

(30a) Repealed by Session Laws 2018-5, s. 15.5(e), effective July 1, 2018.
(31) Repealed by Session Laws 2021-180, s. 9B.4(c), effective July 1, 2021.
(32) Employees of the North Carolina Health Information Exchange Authority.
(33) Employees of the Division of Health Benefits of the Department of Health and Human Services.
(34) Repealed by Session Laws 2021-180, s. 9F.19(a), effective December 18, 2021.
(35) The Associate Superintendent of Early Education who serves as chief academic officer of early education.
(36) Employees of the Outdoor Heritage Advisory Council.
(37) Employees of the Division of State Operated Healthcare Facilities of the Department of Health and Human Services who are (i) health care professionals licensed under Chapter 90 or Chapter 90B of the General Statutes or (ii) engineers responsible for maintenance or buildings operations at one of the health care facilities operated by the Secretary of the Department of Health and Human Services under G.S. 122C-181.
(38) The Executive Director of the North Carolina Boxing and Combat Sports Commission created pursuant to G.S. 143-652.2.

(c2) This Chapter does not apply to any of the following:
(1) Public school superintendents, principals, teachers, and other public school employees.
(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.
(3) Employees of community colleges whose salaries are fixed in accordance with G.S. 115D-5 and G.S. 115D-20 and employees of the Community Colleges System Office whose salaries are fixed by the State Board of Community Colleges in accordance with G.S. 115D-3.
(4) Employees of the Office of Proprietary Schools whose salaries are fixed by the State Board of Proprietary Schools in accordance with G.S. 115D-89.2.
(5) Officers, employees, and members of the governing board of a North Carolina nonprofit corporation with which the Department of Commerce has contracted pursuant to the authority granted in G.S. 143B-431.01.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and Article 6 of this Chapter, this Chapter does not apply to teaching and related educational classes of employees of the Division of Juvenile Justice of the Department of Public Safety, the Department of Health and Human Services, and any other State department, agency, or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b).

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter applies to all State employees, public school employees, and community college employees.

(c6) Article 15 of this Chapter applies to all State employees, public school employees, and community college employees.

(c7) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-14.3, and except as to G.S. 126-14.2, G.S. 126-34.02(b)(1) and (2), and Articles 6 and 7 of this Chapter, this Chapter does not apply to exempt managerial positions.

(c8) Except as to Articles 5, 6, 7, and 14 of this Chapter, this Chapter does not apply to any of the following:

(1) Employees of the University of North Carolina Health Care System.
(2) Employees of the University of North Carolina Hospitals at Chapel Hill, as may be provided pursuant to G.S. 116-37(a)(4).
(3) Employees of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill as may be provided pursuant to G.S. 116-37(a)(4).
(4) Employees of the Medical Faculty Practice Plan, a division of the School of Medicine of East Carolina University.
(5) Employees of UNC-CH Dental School Clinical Operations, a division of the Adams School of Dentistry at the University of North Carolina at Chapel Hill.
(6) Employees of ECU Dental School Clinical Operations, a division of the School of Dental Medicine at East Carolina University.

(c9) Notwithstanding any other provision of this section, Article 16 of this Chapter applies to all exempt and nonexempt State employees in the executive, legislative, and judicial branches unless provided otherwise by Article 16 of this Chapter. Article 16 of this Chapter does not apply to employees described in subdivisions (2) and (3) of subsection (a) of this section.

(c10) Notwithstanding any other provision of this section, G.S. 126-8.5 applies to all exempt and nonexempt State employees in the executive, legislative, and judicial branches unless provided otherwise by G.S. 126-8.5. G.S. 126-8.5 does not apply to employees described in subdivisions (2) and (3) of subsection (a) of this section.

(c11) The following are exempt from (i) the classification and compensation rules established by the State Human Resources Commission pursuant to G.S. 126-4(1) through (4); (ii) G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; (iii) G.S. 126-4(6) only as it applies to promotion and transfer; (iv) G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and (v) Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1:

(1) The Office of the Commissioner of Banks and its employees.
(2) The following employees of the Department of Natural and Cultural Resources:
    a. Director and Associate Directors of the North Carolina Museum of History.
    b. Program Chiefs and Curators.
    c. Regional History Museum Administrators and Curators.
    d. North Carolina Symphony.
    e. Director, Associate Directors, and Curators of Tryon Palace.
    f. Director, Associate Directors, and Curators of Transportation Museum.
    g. Director and Associate Directors of the North Carolina Arts Council.
    h. Director, Assistant Directors, and Curators of the Division of State Historic Sites.
(3) Employees of the Department of Information Technology (DIT), and employees in all agencies, departments, and institutions with similar classifications as DIT employees, who voluntarily relinquish annual longevity payments, relinquish any claim to longevity pay, voluntarily relinquish any claim to career status or eligibility for career status as approved by the State

Chief Information Officer and the Director of the Office of State Human Resources (OSHR).

(c12) Except as to G.S. 126-13, 126-14, 126-14.1, and Articles 6, 7, 14, 15, and 16 of this Chapter, this Chapter does not apply to employees of the Department of State Treasurer possessing specialized skills or knowledge necessary for the proper administration of investment programs and compensated pursuant to G.S. 147-69.3(i2).

(c13) Except as to G.S. 126-13, 126-14, 126-14.1, and Articles 6, 7, 14, 15, and 16 of this Chapter, this Chapter does not apply to employees of the Department of State Treasurer possessing specialized skills or knowledge necessary for the proper administration of the Supplemental Retirement Plans and compensated pursuant to G.S. 135-91(c).

(c14) Notwithstanding any provision of this Chapter to the contrary, each Council of State agency has the sole authority to set the salary of its exempt policymaking and exempt managerial positions within the minimum rates, and the maximum rates plus ten percent (10%), established by the State Human Resources Commission under G.S. 126-4(2).

(c15) Notwithstanding any provision of this Chapter to the contrary, the State Chief Information Officer (State CIO) may do the following:

(1) Classify or reclassify positions in the Department of Information Technology (DIT) according to the classification system established by the State Human Resources Commission (SHRC) as long as the employee meets the minimum requirements of the classification.

(2) Set salaries for DIT employees within the salary ranges for the respective position classification established by the SHRC.

(c16) Except as to Articles 6, 7, and 8 of this Chapter, this Chapter does not apply to commissioned police officer positions of the University of North Carolina. Employees in positions covered by this exception are eligible for all employment and retirement benefits provided to State law enforcement officers subject to this Chapter.

(c17) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to a warden of an adult corrections facility.

(c18) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-4(7), and 126-14.3, and except as to the provisions of G.S. 126-14.2, 126-34.02(b)(1) and (2), and Articles 6 and 7 of this Chapter, this Chapter does not apply to the warden of a State adult correctional facility. Employees in these positions shall be public servants under G.S. 138A-3(70) and shall file Statements of Economic Interest under G.S. 138A-22. Employees in these positions shall receive the protections of former G.S. 126-5(e) if the employees were hired before the date of its repeal and have the minimum cumulative service to qualify under that subsection.

(d) (1) Exempt Positions in Cabinet Department. – Subject to this Chapter, which is known as the North Carolina Human Resources Act, the Governor may designate a total of 425 exempt positions throughout the following departments and offices:

a. Department of Administration.

b. Department of Commerce.

c. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.

d. Department of Public Safety.
e. Department of Natural and Cultural Resources.
f. Department of Health and Human Services.
g. Department of Environmental Quality.
h. Department of Revenue.
i. Department of Transportation.
j. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
k. Department of Information Technology.
l., m. Repealed by Session Laws 2016-126, 4th Ex. Sess., s. 7, effective December 19, 2016.
n. Department of Military and Veterans Affairs.
o. Department of Adult Correction.

(2) Exempt Positions in Council of State Departments and Offices. – The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Superintendent of Public Instruction, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The number of exempt policymaking positions in each department headed by an elected department head listed in this subdivision is limited to 25 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions is limited to 25 positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt policymaking positions designated by the Superintendent of Public Instruction is limited to 70 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions designated by the Superintendent of Public Instruction is limited to 70 exempt managerial positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. – The Governor or elected department head may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the Director of the Office of State Human Resources. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list is deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(2b) Designation of Liaison Positions. – Liaisons to the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 for the Departments of Commerce, Environmental Quality, and Transportation are designated as exempt.

(2c) Repealed by Session Laws 2017-6, s. 1, effective May 1, 2017.

(3) Letter. – Exempt positions shall be designated in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate by July 1 of the year in which the oath of office is administered to each Governor unless subdivision (4) of this subsection applies.

(4) Vacancies. – In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make designations in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate within 180 days after the oath of office is administered to that person.

(5) Creation, Transfer, or Reorganization. – The Governor or elected department head may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after October 1 of the year in which the oath of office is administered to the Governor. The designation shall be made in a letter to the Director of the Office of State Human Resources, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 180 days after the position is created, transferred, or in which reorganization has occurred.

(6) Reversal. – Subsequent to the designation of a position as an exempt position, the status of the position may be reversed and made subject to this Chapter by the Governor or by an elected department head in a letter to the Director of the Office of State Human Resources, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) No Designation for Certain Positions. – Except for deputy commissioners appointed pursuant to G.S. 97-79 and as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt.

(e) **(Repealed for State employees hired on or after August 21, 2013)** An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except as follows:

(1) When an employee who has the minimum service requirements described in G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Human Resources Commission.

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his or her most recent subject position.

(3) When a career State employee as defined by G.S. 126-1.1 who has more than two but less than 10 years or more of cumulative service in a subject position moves from one exempt position covered by this subsection to another position covered by this subsection without a break in service and that employee is later removed from the last exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to the rules regulating and defining priority as adopted by the State Human Resources Commission.

(4) When a career State employee as defined by G.S. 126-1.1 who has 10 years or more of cumulative service moves from one exempt position covered by this subsection to another position covered by this subsection without a break in service and that employee is later removed from the last exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary, within another department or agency. The employee shall be paid at the same grade and salary as the employee's most recent subject position, including all across-the-board legislative increases awarded since the employee's placement in the position that was designated as exempt.

(f) **(Repealed for State employees hired on or after August 21, 2013)** A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days' prior written notification that the position is so designated. A person applying for a position that is designated as exempt shall be notified in writing at the time the person makes the application that the position is designated as exempt.

(h) In case of a dispute as to whether an employee is subject to this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B of the General Statutes. (1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19; 1987 (Reg. Sess., 1988), c. 1064, s. 3; 1989, c. 168, s. 9; c. 236, s. 3; c. 484; c. 727, s. 218(85); c. 751, s. 7(13); 1991, c. 65, s. 2; c. 84, ss. 1, 2; c. 354, s. 3; c. 749, s. 4; 1991 (Reg. Sess., 1992), c. 879, s. 5; c. 959, s. 85; 1993, c. 145, s. 1; c. 321, s. 145(b); c. 553, ss. 39, 40; 1993 (Reg. Sess., 1994), c. 777, s. 4(g); 1995, c. 141, ss. 3, 5; c. 393, s. 1; 1995 (Reg. Sess., 1996), c. 690, s. 15; 1997-443, ss. 11A.118(a), 11A.119(a), 22.2(b); 1997-520, s. 3; 1998-212, s. 11.8(b); 1999-84, s. 21; 1999-253, s. 1; 1999-434, s. 25; 2000-137, s. 4(nn); 2000-147, s. 4; 2000-148, s. 3; 2001-92, s. 2; 2001-424, s.

32.16(a); 2001-474, s. 15; 2001-487, ss. 21(d), 30(a), (b); 2002-126, s. 28.4; 2002-133, s. 4; 2004-124, s. 31.27(b); 2004-129, s. 37; 2005-276, s. 29.34(b); 2005-344, s. 9; 2006-66, ss. 9.11(y), (z), 9.17(e), 18.2(e); 2006-204, s. 2; 2006-221, s. 20; 2006-259, s. 49; 2006-264, s. 11; 2007-117, s. 3(b); 2007-195, s. 1; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2007-484, s. 9(c); 2008-134, s. 73(d); 2009-451, ss. 9.13(f), 27.31(c); 2011-145, ss. 7.31(c), 19.1(g), (h), (l); 2011-241, s. 5; 2011-266, s. 1.37(c); 2011-391, s. 17; 2012-83, s. 7; 2012-142, ss. 8.9A(c), 25.2E(a); 2012-151, s. 11(a); 2013-360, s. 15.10(d); 2013-382, ss. 4.1, 4.3, 4.4, 4.5, 9.1(c); 2013-410, s. 47.2(b); 2014-18, s. 1.4; 2014-100, ss. 7.17(a), 15.16(b), 33.2(b), 35.11(a); 2014-115, s. 55.3(a); 2015-164, s. 9(b); 2015-241, ss. 7A.4(k), 12A.3(b), 12A.5(e), 14.30(s), (u), 24.1(v); 2015-245, s. 20; 2015-268, s. 7.3(a); 2016-94, s. 15.10(b); 2016-126, 4th Ex. Sess., ss. 7, 8; 2017-6, s. 1; 2017-57, ss. 7.23I(b), 35.18C; 2017-186, s. 2(sssss); 2018-5, ss. 15.5(e), 35.19; 2018-84, s. 8(b); 2019-32, s. 1(b); 2019-200, s. 13; 2020-56, s. 7; 2020-78, s. 9.1; 2021-80, s. 1; 2021-180, ss. 9B.4(c), 9F.19(a), 19A.7(e), 21.2(b); 2022-58, s. 20(a); 2022-62, s. 58(a), (b); 2022-74, ss. 8.4(c), 19C.1(a).)

§ 126-6: Repealed by Session Laws 1991, c. 65, s. 3.

§ 126-6.1: Repealed by Session Laws 1993, c. 397, s. 1.

§ 126-6.2. Reports.

(a) Beginning January 1, 1998, and annually thereafter, the head of each State agency, department, or institution employing State employees subject to the North Carolina Human Resources Act shall report to the Office of State Human Resources on the following:

(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of settlements, attorneys' fees, litigation expenses, damages, or awards incurred by the respective State agencies, departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

(2) Any other human resources functions or actions as may be requested by the Director of the Office of State Human Resources in order for the Office to evaluate the efficiency, productivity, and compliance of a State agency, department, or institution with policies, including, but not limited to, the compensation of State employees, voluntary shared-leave programs, equal employment opportunity plans and programs, and work options programs.

(b) Beginning May 1, 1998, and annually thereafter, the State Human Resources Commission shall report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits, and upon request, on the results of any other reports regarding human resources action or functions pursuant to subsection (a) of this section.

(c) Repealed by Session Laws 2013-382, s. 7.5, effective August 21, 2013. (1997-520, s. 8(a)-(c); 2013-382, ss. 7.5, 9.1(c); 2015-260, s. 4.)

§ 126-6.3. Temporary employment needs of Cabinet and Council of State agencies; use of the Temporary Solutions Program.

(a) Use of Temporary Solutions Required for Cabinet Agencies. – Notwithstanding G.S. 126-5 or any other provision of law, all Cabinet agencies that utilize temporary employees to perform work that is not information technology-related shall employ them through the Temporary Solutions Program administered by the Office of State Human Resources. The Director of the Office of State Human Resources may create exceptions to this requirement when doing so would be in the best interests of the State in the sole discretion of the Director. An exception shall be invalid unless it is in writing. Council of State agencies may use the Temporary Solutions Program in the discretion of the agency.

(b) Compliance Monitoring. – The Office of State Human Resources shall monitor the employment of temporary employees by Cabinet and Council of State agencies and shall report biannually to the Joint Legislative Oversight Committee on General Government and to the Fiscal Research Division on agency compliance with this section and policies and rules adopted pursuant to it. Each State agency granted an exception under this section from using the Temporary Solutions Program and any Council of State agency that elected to not use the Temporary Solutions Program shall record the time worked by each temporary employee in the agency, including the number of hours worked per week, number of months worked, and the amount of time the employee was not employed after 11 consecutive months of service with the agency. To the extent possible for temporary employees, agencies shall use BEACON, or the State payroll system that supersedes BEACON, for payroll purposes. If it is not feasible for an agency to use BEACON, or the superseding system for payroll purposes, the agency shall report the information required by this section to the Office of State Human Resources in accordance with guidelines and requirements established by the Director of Temporary Solutions.

(c) Definitions. – For purposes of this section, the following definitions shall apply:

(1) Cabinet agency. – A unit of the executive branch of State government, such as a department, an institution, a division, a commission, a board, or a council that is under the control of the Governor. The term does not include an agency that is under the control of an official who is a member of the Council of State.

(2) Council of State agency. – An agency that is under the control of an official who is a member of the Council of State. (2015-241, s. 26.2(e); 2018-5, s. 26A.2.)

Article 2.

Salaries, Promotions, and Leave of State Employees.

§ 126-7: Repealed. See editor's note.

§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force; Work First hiring; reorganization through reduction.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted in a place readily accessible to employees within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the vacancy.

If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall also be

listed on a website maintained by the Office of State Human Resources for the purpose of informing current State employees and the public of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Human Resources to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Human Resources that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(b) No loss of funds shall be required as a precondition for a reduction in force. State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

(c) The State Human Resources Commission shall adopt rules governing the priority and salary rights of State employees separated from State employment as the result of reductions in force who accept a position in State government to provide that the employee shall be paid a salary no higher than the maximum of the salary grade of the position accepted.

(d) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(e) If a State employee subject to this section:

(1) Applies for another position of State employment that would constitute a promotion; and

(2) Has substantially equal qualifications as an applicant who is not a State employee;

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

(f) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:

(1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and

(2) Has substantially equal qualifications as any other applicant;

then within all State agencies, the State employee who has been notified of or separated due to a reduction in force shall receive priority consideration over all other applicants. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal.

(f1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force accepts or rejects an offer for a position of State employment that is equal to or higher than the position held or equal to or higher than the salary earned by the employee at the time of separation or notification, then the employee's acceptance or rejection of that offer shall satisfy and terminate the one-time, 12-month priority granted by subsection (f) of this section.

(f2) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force and who applies for a position equal

to or higher than the position held by the employee at the time of separation or notification, but declines an interview for the position for which the employee applied, then the employee's rejection of an offer of the interview for the position shall satisfy and terminate the one-time, 12-month priority granted by subsection (f) of this section. The State Human Resources Commission shall adopt a policy to carry out this subsection.

(g) "Qualifications" within the meaning of subsection (e) of this section shall consist of:

(1) Training or education;

(2) Years of experience; and

(3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for.

(h) Each State agency, department, and institution is encouraged to hire into State government employment qualified applicants who are current or former Work First Program participants.

(i) Each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States.

(j) Any department or office listed in G.S. 126-5(d)(1) or (2) and The University of North Carolina and its constituent institutions may reorganize and restructure its positions through a voluntary separation process, in accordance with a policy approved by the State Human Resources Commission and subject to funding and approval by the Office of State Budget and Management. (1987, c. 689, s. 2; 1991, c. 65, s. 4; c. 474, s. 1; 1995, c. 141, s. 9; c. 507, s. 7.20(a); 1997-443, s. 12.7(d); 2006-259, s. 23.1(a); 2011-145, s. 29.21A(a); 2011-391, s. 59(a), (b); 2013-382, ss. 5.1, 9.1(c); 2015-260, s. 5.1; 2018-5, s. 35.24.)

§ 126-7.2: Repealed by Session Laws 2013-382, s. 6.2, effective August 21, 2013, and applicable to grievances filed on or after that date.

§ 126-7.3. Annual compensation surveys.

To guide the Governor and the General Assembly in making decisions regarding the compensation of State employees, the Office of State Human Resources shall conduct annual compensation surveys. The Commission shall present the results of the compensation survey to the Appropriations Committees of the House of Representatives and the Senate no later than two weeks after the convening of the legislature in odd-numbered years and May 1st of even-numbered years. (2013-382, ss. 7.9(b), 9.1(c).)

§ 126-8. Minimum leave granted State employees.

The amount of vacation leave granted to each full-time State employee subject to the provisions of this Chapter shall be determined in accordance with a graduated scale established by the State Human Resources Commission which shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated monthly, cumulative to at least 30 days. On December 31 of each year, any State employee who has vacation leave in excess of the allowed accumulation shall have that leave converted to sick leave. Sick leave allowed as needed to such State employees shall be at a rate not less than 10 days for each calendar year, cumulative from year to year. Notwithstanding any other provisions of this section, no full-time State employee subject to the

provisions of Chapter 126, as the same appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973, shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative to at least 30 days. (1965, c. 640, s. 2; 1973, c. 697, ss. 1, 2; 1975, c. 667, s. 2; 1993, c. 321, s. 73(f); c. 561, s. 18(a); 2013-382, s. 9.1(c).)

§ 126-8.1. Paid leave for certain athletic competition.

(a) As used in this section, the term "United States team" includes any group leader, coach, official, trainer, or athlete who is a member of an official United States delegation in Pan American, Olympic or international athletic competition.

(b) Any State employee or public school employee paid by State funds who has been chosen to be a member of a United States team for Pan American, Olympic or international competition shall be granted paid leave, in addition to annual and sick leave that person is otherwise entitled to, for the sole purpose of training for and competing in that competition. The paid leave shall be for the period of the official training camp and competition or 30 days a year, whichever is less.

(c) The Office of State Human Resources may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the Governor. (1979, c. 708; 1983, c. 717, s. 42; 1985, (Reg. Sess., 1986), c. 955, ss. 44, 45; 2006-203, s. 69; 2015-260, s. 5.2.)

§ 126-8.2. Replacement of law-enforcement officer on final sick leave.

When a sworn law-enforcement officer employed by the State is on sick leave, and the head of the department employing the officer has obtained a certification from a physician that the officer will not recover and return to duty, a replacement for the officer may be hired even though the resulting number of employees in the department exceeds the number for which an appropriation was made in the Current Operations Appropriations Act, if sufficient funds are available from appropriations to the department for salaries to pay the salary of both the new employee and the officer on sick leave until the officer's accumulated leave is exhausted or his employment is terminated. (1983 (Reg. Sess., 1984), c. 1034, s. 105.)

§ 126-8.3. Voluntary shared leave.

(a) The State Human Resources Commission, in cooperation with the State Board of Community Colleges and the State Board of Education, shall adopt rules and policies to allow any employee at a State agency to share leave voluntarily with an immediate family member who is an employee of a State agency, community college, or public school; and with a coworker's immediate family member who is an employee of a State agency, community college, or public school. For the purposes of this section, the term "immediate family member" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. The term "coworker" means that the employee donating the leave is employed by the same agency, department, institution, university, local school administrative unit, or community college as the employee whose immediate family member is receiving the leave.

(b) The State Human Resources Commission shall adopt rules and policies for the voluntary shared leave program to allow an employee at a State agency to donate sick leave to a nonfamily member employee of a State agency. A donor of sick leave to a nonfamily member recipient shall not donate more than five days of sick leave per year to any one nonfamily member recipient. The combined total of sick leave donated to a recipient from nonfamily member donors

shall not exceed 20 days per year. Donated sick leave shall not be used for retirement purposes, and employees who donate sick leave shall be notified in writing of the State retirement credit consequences of donating sick leave.

(c) The State Human Resources Commission, the Department of Public Instruction, and the Community Colleges System Office and all State agencies, departments, and institutions shall annually report to the Office of State Human Resources on the voluntary shared leave program. For the prior fiscal year, the report shall include the total number of days or hours of vacation leave and sick leave donated and used by voluntary shared leave recipients and the total cost of the vacation leave and sick leave donated and used. (1999-170, s. 1; 2003-9, s. 1; 2003-284, s. 30.14A(a); 2010-139, ss. 1, 3; 2013-382, ss. 7.8, 9.1(c); 2019-165, s. 3.7.)

§ 126-8.4. (See note on condition precedent) No sick leave taken for absences by State employees resulting from adverse reactions to vaccination.

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees. (2003-169, s. 4.)

§ 126-8.5. Discontinued service retirement allowance and severance wages for certain State employees.

(a) 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, the Director of the Budget shall pay either a discontinued service retirement allowance or severance wages to any affected State employee, provided reemployment is not available. As used in this section, "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. In determining whether to pay a discontinued service retirement

allowance or severance wages, the Director of the Budget shall consider the recommendation of the department head involved and any recommendation of the Director of the Office of State Human Resources. Severance wages shall not be paid to an employee who chooses a discontinued service retirement. Severance wages shall not be subject to employer or employee retirement contributions. Severance wages shall be paid according to the policies adopted by the State Human Resources Commission.

Notwithstanding any other provisions of the State's retirement laws, any employee of the State who is a member of the Teachers' and State Employees' Retirement System or the Law-Enforcement Officers' Retirement System and whose job is involuntarily terminated as a result of economies in the State Budget may be entitled to a discontinued service retirement allowance, subject to the approval of the employing agency and the availability of agency funds. An unreduced discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 55 years of age; or a discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 50 years of age, reduced by one-fourth of one percent (1/4 of 1%) for each month that retirement precedes the employee's fifty-fifth birthday. In cases where a discontinued service retirement allowance is approved, the employing agency shall make a lump sum payment to the Administrator of the State Retirement Systems equal to the actuarial present value of the additional liabilities imposed upon the System, to be determined by the System's consulting actuary, as a result of the discontinued service retirement, plus an administrative fee to be determined by the Administrator, plus an amount to be deposited in the Retiree Health Benefit Fund. The amount to be deposited in the Retiree Health Benefit Fund shall be calculated by multiplying the number of years between the employee's date of discontinued service retirement and the employee's earliest unreduced retirement date under G.S. 135-5 by the most recent employer contribution rate to the Retiree Health Benefit Fund and then, if the employee is or would be eligible for retiree medical coverage under the State Health Plan for Teachers and State Employees, multiplying that figure by the salary used in the discontinued salary retirement calculation.

The salary used to determine severance wages under this section is the last annual salary except that if the employee was promoted within the previous 12 months, the last annual salary is that annual salary prior to the promotion. If the annual salary prior to the promotion is used, it shall be adjusted to account for any across-the-board legislative salary increases. Excluded from any calculation are any benefits such as, but not limited to, overtime pay, shift pay, holiday premium, or longevity pay. The salary used to determine the discontinued retirement allowance under this section is the same as the average final compensation under G.S. 135-1(5).

(b) Any employee separated from State government and paid severance wages under this section shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of The University of North Carolina and the constituent institutions of the North Carolina Community College System, until 12 months have elapsed since the separation. This subsection does not affect any reduction in force rights that the employee may have. (1979, c. 838, s. 22; 1983, c. 761, s. 225; c. 923, s. 217(R); 1983 (Reg. Sess., 1984), c. 1034, s. 251; 1985 (Reg. Sess., 1986), c. 981, s. 1; c. 1024, s. 20; 1987, c. 177, s. 2; 1989 (Reg. Sess., 1990), c. 1066, s. 36(a); 1998-212, s. 28.28(a); 2006-203, s. 6; 2013-382, s. 9.1(c); 2020-29, s. 1(h).)

Article 3.

§ 126-9. County or municipal employees may be made subject to rules adopted by local governing body.

(a) When a board of county commissioners adopts rules and regulations governing annual leave, sick leave, hours of work, holidays, and the administration of the pay plan for county employees generally and the county rules and regulations are filed with the Director of the Office of State Human Resources, the county rules will supersede the rules adopted by the State Human Resources Commission as to the county employees otherwise subject to the provisions of this Chapter.

(b) No county employees otherwise subject to the provisions of this Chapter may be paid a salary less than the minimum nor more than the maximum of the applicable salary range adopted in accordance with this Chapter without approval of the State Human Resources Commission. Provided, however, that subject to the approval of the State Human Resources Commission, a board of county commissioners may adjust the salary ranges applicable to employees who are otherwise subject to the provisions of this Chapter, in order to cause the level of pay to conform to local financial ability and fiscal policy. The State Human Resources Commission shall adopt policies and regulations to ensure that significant relationships within the schedule of salary ranges are maintained.

(c) When two or more counties are combined into a district for the performance of an activity whose employees are subject to the provisions of this Chapter, the boards of county commissioners of the counties may jointly exercise the authority hereinabove granted in subsections (a) and (b) of this section.

(d) When a municipality is performing an activity by or through employees which are subject to the provisions of this Chapter, the governing body of the municipality may exercise the authority hereinabove granted in subsections (a) and (b) of this section. (1965, c. 640, s. 2; 1975, c. 667, s. 2; 2013-382, s. 9.1(c).)

§ 126-10. Personnel services to local governmental units.

The State Human Resources Commission may make the services and facilities of the Office of State Human Resources available upon request to the political subdivisions of the State. The State Human Resources Commission may establish reasonable charges for the service and facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit of the general fund. (1965, c. 640, s. 2; 1975, c. 667, ss. 2, 12; 2013-382, s. 9.1(c).)

§ 126-11. Local personnel system may be established; approval and monitoring; rules and regulations.

(a) The board of county commissioners of any county may establish and maintain a personnel system for all employees of the county subject to its jurisdiction, which system and any substantial changes to the system, shall be approved by the State Human Resources Commission as substantially equivalent to the standards established under this Chapter for employees of local departments of social services, local health departments, and area mental health programs, local emergency management programs. If approved by the State Human Resources Commission, the employees covered by the county system shall be exempt from all provisions of this Chapter except Article 6.

(a1) With approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, the area mental health authority may establish and

maintain a personnel system for all employees of the area mental health authority, which system and any substantial changes to the system, shall be equivalent to the standards established under this Chapter for employees of area mental health authorities. If approved by the State Human Resources Commission, the employees covered by the area mental health authority system shall be exempt from all provisions of this Chapter except Article 6.

(b) A board of county commissioners may petition the State Human Resources Commission to determine whether any portion of its total personnel system meets the requirements in (a) above. Upon such determination, county employees shall be exempt from the provisions of this Chapter relating to the approved portions of the county personnel system.

(b1) The board of an area mental health authority, with the approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, may petition the State Human Resources Commission to determine whether any portion of its total personnel system meets the requirements in subsection (a1) above. Upon such determination, area mental health authority employees shall be exempt from the provisions of this Chapter relating to the approved portions of the area mental health authority personnel system except as provided in G.S. 122C-121.

(c) The Office of State Human Resources shall monitor at least annually county or area mental health authority personnel systems approved under this section in order to ensure compliance.

(d) In order to define "substantially equivalent," the State Human Resources Commission is authorized to promulgate rules and regulations to implement the federal merit system standards and these regulations at a minimum shall include: recruitment and selection of employees; position classification; pay administration; training; employee relations; equal employment opportunity; and records and reports. (1965, c. 640, s. 2; 1975, c. 667, s. 2; 1983, c. 674, s. 1; 1991, c. 65, s. 5; c. 564, s. 1; 2013-382, s. 9.1(c).)

Article 4.

Competitive Service.

§ 126-12. Governor and Council of State to determine competitive service.

The Governor, with the approval of the Council of State, shall from time to time determine for which, if any of the positions subject to the provisions of Article 1 of this Chapter, appointments and promotions shall be based on a competitive system of selection. (1965, c. 640, s. 2.)

Article 5.

Political Activity of Employees.

§ 126-13. Appropriate political activity of State employees defined.

(a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the North Carolina Human Resources Act or temporary State employee shall:

(1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of

time during which he is expected to perform services for which he receives compensation from the State;

(2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a Class 1 misdemeanor. (1967, c. 821, s. 1; 1985, c. 469, s. 1; c. 617, s. 5; 1993, c. 539, s. 930; 1994, Ex. Sess., c. 24, s. 14(c); 2013-382, s. 9.1(c).)

§ 126-14. Promise or threat to obtain political contribution or support.

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the North Carolina Human Resources Act, to coerce:

(1) a State employee subject to the North Carolina Human Resources Act,

(2) a probationary State employee,

(3) a temporary State employee, or

(4) an applicant for a position subject to the North Carolina Human Resources Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of the individual's voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to an individual listed in subdivisions (1) through (4) of this subsection.

(a1) It is unlawful for an individual as defined in G.S. 138A-3(70)a. to coerce a person as described in G.S. 138A-32(d)(1), (2), or (3) to support or contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a political party by threatening discipline or promising preferential treatment with regard to that person's business with the individual's State office or that person's activities regulated by the individual's State office.

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the North Carolina Human Resources Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution. (1967, c. 821, s. 1; 1985, c. 469, s. 2; 1991, c. 505, s. 1; 1993, c. 539, s. 931; 1994, Ex. Sess., c. 24, s. 14(c); 2010-169, s. 1(a); 2013-382, s. 9.1(c); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 126-14.1. Threat to obtain political contribution or support.

(a) It is unlawful for any person to coerce:

(1) a State employee subject to the North Carolina Human Resources Act,
(2) a probationary State employee,
(3) a temporary State employee, or
(4) an applicant for a position subject to the North Carolina Human Resources Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of his voter registration by explicitly threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to any person listed in subdivisions (1) through (3) of this subsection.

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the North Carolina Human Resources Act, probationary State employee, or temporary State employee, who without probable cause falsely accuses a person of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-34.02 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution. (1985, c. 469, s. 3; 1991, c. 505, s. 2; 1993, c. 539, s. 932; 1994, Ex. Sess., c. 24, s. 14(c); 2013-382, ss. 6.3, 9.1(c); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 126-14.2. Political hirings limited.

(a) It is the policy of this State that State departments, agencies, and institutions select from the pool of the most qualified persons for State government employment based upon job-related qualifications of applicants for employment using fair and valid selection criteria.

(b) All State departments, agencies, and institutions shall select from the pool of the most qualified persons for State government employment without regard to political affiliation or political influence. For the purposes of this section, "qualified persons" shall mean each of the State employees or applicants for initial State employment who:

(1) Have timely applied for a position in State government;
(2) Have the essential qualifications for that position; and
(3) Are determined to be substantially more qualified as compared to other applicants for the position, after applying fair and valid job selection criteria, in accordance with G.S. 126-5(e), G.S. 126-7.1, Articles 6 and 13 of this Chapter, and State personnel policies approved by the State Human Resources Commission.

(c) It is a violation of this section if:

(1) The complaining State employee or applicant for initial State employment timely applied for the State government position in question;
(2) The complaining State employee or applicant for initial State employment was not hired into the position;
(3) The complaining State employee or applicant for initial State employment was among the most qualified persons applying for the position as defined in this Chapter;
(4) The successful applicant for the position was not among the most qualified persons applying for the position; and
(5) The hiring decision was based upon political affiliation or political influence.

(d) The provisions of this section shall not apply to positions exempt from this Chapter, except that this section does apply to exempt managerial positions as defined by G.S. 126-5(b)(2). (1997-520, s. 1; 2013-382, s. 9.1(c); 2014-115, s. 55.3(b); 2015-260, s. 5.3; 2017-57, s. 35.18.)

§ 126-14.3. Open and fair competition.

The State Human Resources Commission shall adopt rules or policies to:

(1) Assure recruitment, selection, and hiring procedures that encourage open and fair competition for positions in State government employment and that encourage the hiring of a diverse State government workforce.

(2) Assure the proper and thorough advertisement of job openings in State government employment and lengthen, as appropriate, the period for submitting applications for State government employment.

(3) Require that a closing date shall be posted for each job opening, unless an exception for critical classifications has been approved by the State Human Resources Commission.

(4) Require that timely written notice shall be provided to each unsuccessful applicant for State employment who is in the pool of the most qualified applicants for a position, as defined by G.S. 126-14.2(b).

(5) Assure that State departments, agencies, and institutions follow similar selection processes when hiring State employees in accordance with this Chapter.

(6) Assure that State supervisory and management personnel, and personnel professionals, receive adequate training and continuing education to carry out the State's policy of hiring from among the most qualified persons.

(7) Establish a monitoring system to measure the effectiveness of State agency personnel procedures to promote fairness and reduce adverse impact on all demographic groups in the State government workforce.

(8) Otherwise implement the State's policy of nonpolitical hiring practices in accordance with this Chapter. (1997-520, s. 1; 2013-382, s. 9.1(c).)

§ 126-14.4: Repealed by Session Laws 2013-382, s. 7.6, effective August 21, 2013.

§ 126-15. Disciplinary action for violation of Article.

Failure to comply with this Article is grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office. (1967, c. 821, s. 1.)

§ 126-15.1: Repealed by Session Laws 2013-382, s. 3.2, effective August 21, 2013.

Article 6.

Equal Employment and Compensation Opportunity; Assisting in Obtaining State Employment.

§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

All State agencies, departments, and institutions and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, national origin, sex, age, disability, or genetic information to all persons otherwise qualified. (1971, c. 823; 1975, c. 158; 1977, c. 866, s. 7; 1979, c. 862, s. 3; 1983 (Reg. Sess., 1984), c. 1116, s. 111; 1985, c. 571, s. 2; 1991, c. 65, s. 6; 2013-382, s. 7.1.)

§ 126-16.1. Equal employment opportunity training.

Each State agency, department, and institution and The University of North Carolina shall enroll each newly appointed supervisor or manager within one year of appointment in the Equal Employment Opportunity training offered or approved by the Office of State Human Resources. (1991, c. 416, s. 1; 2013-382, ss. 7.2, 9.1(c).)

§ 126-17. Retaliation by State departments and agencies and local political subdivisions.

No State department, agency, or local political subdivision of North Carolina shall retaliate against an employee for protesting alleged violations of G.S. 126-16. (1977, c. 866, s. 8.)

§ 126-18. Compensation for assisting person in obtaining State employment barred; exception.

It shall be unlawful for any person, firm or corporation to collect, accept or receive any compensation, consideration or thing of value for obtaining on behalf of any other person, or aiding or assisting any other person in obtaining employment with the State of North Carolina; provided, however, any person, firm, or corporation that is duly licensed and supervised by the North Carolina Department of Labor as a private employment service acting in the normal course of business, may collect such regular and customary fees for services rendered pursuant to a written contract when such fees are paid by someone other than the State of North Carolina; however, any person, firm, or corporation collecting fees for this service must have been licensed by the North Carolina Department of Labor for a period of not less than one year.

Any person, firm or corporation collecting fees for this service must make a monthly report to the Department of Labor listing the name of the person, firm or corporation collecting fees and the person for whom a job was found, the nature and purpose of the job obtained, and the fee collected by the person, firm or corporation collecting the fee. Violation of this section shall constitute a Class 1 misdemeanor. (1977, c. 397, s. 1; 1993, c. 539, s. 933; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 126-19. Equal employment opportunity plans; reports; maintenance of services by Director of the Office of State Human Resources.

(a) Each member of the Council of State under G.S. 143A-11, each of the principal departments enumerated in G.S. 143B-6, The University of North Carolina, the judicial branch, and the legislative branch, shall develop and submit on an annual basis an Equal Employment Opportunity plan which shall include goals and programs that provide positive measures to assure equitable and fair representation of North Carolina's citizens. The plans developed by the judicial branch and by the Legislative Services Office on behalf of the legislative branch shall be submitted to the General Assembly on or before June 1 of each year. All other such plans shall be submitted to the Director of the Office of State Human Resources for review and approval on or before March 1, of each year.

(b) Repealed by Session Laws 2013-382, s. 7.3, effective August 21, 2013.

(c) The Director of the Office of State Human Resources will provide services of Equal Employment Opportunity technical assistance, training, oversight, monitoring, evaluation, support programs, and reporting to assure that State government's work force is diverse at all occupational levels. These services shall be provided by qualified personnel. (1991 (Reg. Sess., 1992) c. 919, ss. 2-4; 2013-382, ss. 7.3, 9.1(c).)

§ 126-20. Reserved for future codification purposes.

§ 126-21. Reserved for future codification purposes.

Article 7.

The Privacy of State Employee Personnel Records.

§ 126-22. Personnel files not subject to inspection under § 132-6.

(a) Except as provided in G.S. 126-23 and G.S. 126-24, personnel files of State employees shall not be subject to inspection and examination as authorized by G.S. 132-6.

(b) For purposes of this Article the following definitions apply:

(1) "Employee" means any current State employee, former State employee, or applicant for State employment.

(2) "Employer" means any State department, university, division, bureau, commission, council, or other agency subject to Article 7 of this Chapter.

(3) "Personnel file" means any employment-related or personal information gathered by an employer or by the Office of State Human Resources. Employment-related information contained in a personnel file includes information related to an individual's application, selection, promotion, demotion, transfer, leave, salary, contract for employment, benefits, suspension, performance evaluation, disciplinary actions, and termination. Personal information contained in a personnel file includes an individual's home address, social security number, medical history, personal financial data, marital status, dependents, and beneficiaries.

(4) "Record" means the personnel information that each employer is required to maintain in accordance with G.S. 126-23.

(c) Personnel files of former State employees who have been separated from State employment for 10 or more years may be open to inspection and examination except for papers and documents relating to demotions and to disciplinary actions resulting in the dismissal of the employee. Retirement files maintained by the Retirement Systems Division of the Department of State Treasurer shall be made public pursuant to G.S. 128-33.1 and G.S. 135-6.1.

(d) Repealed by Session Laws 2016-108, s. 2(d), effective July 22, 2016. (1975, c. 257, s. 1; 1977, c. 866, s. 9; 2007-508, s. 4.5; 2008-194, s. 11(a); 2013-382, s. 9.1(c); 2016-108, s. 2(d).)

§ 126-23. Certain records to be kept by State agencies open to inspection.

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

(1) Name.

(2) Age.

(3) Date of original employment or appointment to State service.

(4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.

(5) Current position.

(6) Title.

(7) Current salary.

(8) Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.

(9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.

(10) Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau.

(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.

(12) The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Human Resources Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Except as provided in subsection (d) of this section, any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(d) Notwithstanding any other provision of this section, persons in the custody of, or under the supervision of, the Division of Prisons and persons in the custody of local confinement facilities are not entitled to access to the records made public under this section and are prohibited from obtaining those records, absent a court order authorizing access to, or custody, or possession.

(e) An attorney investigating allegations of unlawful misconduct or abuse by a Division of Prisons employee may request, and shall be provided with, information sufficient to identify the full name or names of the employee alleged to be involved in the misconduct or abuse in the current position of the employee within the Division; or, the last position held by the employee and the last date of employment by the Division. The attorney may not give the offender copies of departmental records or official documents absent a court order authorizing access to, or custody, or possession. (1975, c. 257, s. 1; c. 667, s. 2; 2007-508, s. 4; 2010-169, s. 18(a); 2011-145, s. 19.1(h); 2011-324, s. 1.1(b); 2013-382, s. 9.1(c); 2017-186, s. 2(ttttt); 2021-180, s. 19C.9(p).)

§ 126-24. Confidential information in personnel files; access to such information.

All other information contained in a personnel file is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file in its entirety except for (i) letters of reference solicited prior to employment, or (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. An employee's medical record may be disclosed to a licensed physician designated in writing by the employee;

(2) The supervisor of the employee;

(2a) A potential State or local government supervisor, during the interview process, only with regard to performance management documents;

(3) Members of the General Assembly who may inspect and examine personnel records under the authority of G.S. 120-19;

(4) A party by authority of a proper court order may inspect and examine a particular confidential portion of a State employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the department head of the employee whose record is to be inspected or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Chapter, any department head may, in his discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to his department or whose personnel file is maintained in his department and the reasons therefor and may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that the release of such information or the inspection and examination of such file or portion thereof is essential to maintaining the integrity of such department or to maintaining the level or quality of services provided by such department; provided that prior to releasing such information or making such file or portion thereof available as provided herein, such department head shall prepare a memorandum setting forth the circumstances which the department head deems to require such disclosure and the information to be disclosed. The memorandum shall be retained in the files of said department head and shall be a public record. (1975, c. 257, s. 1; 1977, c. 866, s. 10; 1977, 2nd Sess., c. 1207; 2015-260, s. 5.5.)

§ 126-25. Remedies of employee objecting to material in file.

(a) An employee, former employee, or applicant for employment who objects to material in the employee's file may place in his or her file a written statement relating to the material the employee considers to be inaccurate or misleading.

(b) An employee, former employee, or applicant for employment who objects to material in the employee's file because he or she considers it inaccurate or misleading may seek the removal of such material from the file in accordance with a grievance procedure approved by the State Human Resources Commission. If the agency determines that material in the employee's file is inaccurate or misleading, the agency shall remove or amend the inaccurate material to ensure that the file is accurate. Nothing in this subsection shall be construed to permit an employee to appeal the contents of a performance appraisal or written disciplinary action. (1975, c. 257, s. 1; c. 667, s. 2; 1977, c. 866, s. 11; 1985, c. 638; 2013-382, s. 7.4; 2014-115, s. 55.3(c).)

§ 126-26. Rules and regulations.

The State Human Resources Commission shall prescribe such rules and regulations as it deems necessary to implement the provisions of this Article. (1975, c. 257, s. 1; c. 667, s. 2; 2013-382, s. 9.1(c).)

§ 126-27. Penalty for permitting access to confidential file by unauthorized person.

Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of a personnel file designated as confidential by this Article, unless such person is one specifically authorized by G.S. 126-24 to have access thereto for inspection and examination, shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 257, s. 1; 1993, c. 539, s. 934; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 126-28. Penalty for examining, copying, etc., confidential file without authority.

Any person, not specifically authorized by G.S. 126-24 to have access to a personnel file designated as confidential by this Article, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 257, s. 1; 1993, c. 539, s. 935; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 126-29. Access to material in file for agency hearing.

A party to a quasi-judicial hearing of a State agency subject to Article 7 of this Chapter, or a State agency subject to Article 7 of this Chapter which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion. Nothing in this Article shall impose liability on any agent or officer of the State for compliance with this provision, notwithstanding any other provision of this Article. (1977, c. 866, s. 12; 1987, c. 320, s. 5.)

§ 126-30. Fraudulent disclosure and willful nondisclosure on application for State employment; penalties.

(a) Any employee who knowingly and willfully discloses false or misleading information, or conceals dishonorable military service; or conceals prior employment history or other requested information, either of which are significantly related to job responsibilities on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment. Dismissal shall be mandatory where the applicant discloses false or misleading information in order to meet position qualifications. Application forms for State employment shall include a statement informing applicants of the consequences of such fraudulent disclosure or lack of disclosure.

(b) The employing authority within each department, university, board, or commission, shall verify the status of credentials and the accuracy of statements contained in the application of each new employee within 90 days from the date of the employees employment. Failure to verify the application shall not bar action under subsection (a) above.

(c) The State Human Resources Commission shall issue rules and procedures to implement this section for all departments, agencies and institutions which are not exempted from the North

Carolina Human Resources Act under G.S 126-5(c1). Each agency, department and institution which is exempted under G.S. 126-5(c1) shall issue regulations to implement this section pursuant to the rulemaking procedures applicable to it. (1987, c. 666, s. 1; 2013-382, s. 9.1(c).)

§ 126-31. Reserved for future codification purposes.

§ 126-32. Reserved for future codification purposes.

§ 126-33. Reserved for future codification purposes.

Article 8.

Employee Appeals of Grievances and Disciplinary Action.

§ 126-34: Repealed by Session Laws 2013-382, s. 6.1, effective August 21, 2013, and applicable to grievances filed on or after that date.

§ 126-34.01. Grievance; resolution.

Any State employee having a grievance arising out of or due to the employee's employment shall first discuss the problem or grievance with the employee's supervisor, unless the problem or grievance is with the supervisor. Then the employee shall follow the grievance procedure approved by the State Human Resources Commission. The proposed agency final decision shall not be issued nor become final until reviewed and approved by the Office of State Human Resources. The agency grievance procedure and Office of State Human Resources review shall be completed within 90 days from the date the grievance is filed. (2013-382, ss. 6.1, 9.1(c).)

§ 126-34.02. Grievance appeal process; grounds.

(a) Once a final agency decision has been issued in accordance with G.S. 126-34.01, an applicant for State employment, a State employee, or former State employee may file a contested case in the Office of Administrative Hearings under Article 3 of Chapter 150B of the General Statutes. The contested case must be filed within 30 days of receipt of the final agency decision. Except for cases of extraordinary cause shown, the Office of Administrative Hearings shall hear and issue a final decision in accordance with G.S. 150B-34 within 180 days from the commencement of the case. In deciding cases under this section, the Office of Administrative Hearings may grant the following relief:

(1) Reinstate any employee to the position from which the employee has been removed.

(2) Order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied.

(3) Direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improper action of the appointing authority.

An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

(b) The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:

(1) Discrimination or harassment. – An applicant for State employment, a State employee, or former State employee may allege discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in his or her application for employment or in the terms and conditions of the employee's employment, or in the termination of his or her employment.

(2) Retaliation. – An applicant for State employment, a State employee, or former State employee may allege retaliation for protesting discrimination based on race, religion, color, national origin, sex, age, disability, political affiliation, or genetic information if the employee believes that he or she has been retaliated against in his or her application for employment or in the terms and conditions of the employee's employment, or in the termination of the employee's employment.

(3) Just cause for dismissal, demotion, or suspension. – A career State employee may allege that he or she was dismissed, demoted, or suspended for disciplinary reasons without just cause. A dismissal, demotion, or suspension which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this section. However, in contested cases conducted pursuant to this section, an employee may appeal an involuntary nondisciplinary separation due to an employee's unavailability in the same fashion as if it were a disciplinary action, but the agency shall only have the burden to prove that the employee was unavailable. In cases of such disciplinary action the employee shall, before the action is taken, be furnished with a statement in writing setting forth the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal under the agency grievance procedure. However, an employee may be suspended without warning pending the giving of written reasons in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons.

(4) Veteran's preference. – An applicant for State employment or a State employee may allege that he or she was denied veteran's preference in violation of the law.

(5) Failure to post or give priority consideration. – An applicant for State employment or a State employee may allege that he or she was denied hiring or promotion because a position was not posted in accordance with this Chapter; or a career State employee may allege that he or she was denied a promotion as a result of a failure to give priority consideration for promotion as required by G.S. 126-7.1; or a career State employee may allege that he or she was denied hiring as a result of the failure to give him or her a reduction-in-force priority.

(6) Whistleblower. – A whistleblower grievance as provided for in this Chapter.

(c) Any issue for which an appeal to the Office of Administrative Hearings has not been specifically authorized by this section shall not be grounds for a contested case hearing.

(d) In contested cases conducted pursuant to this section, the burden of showing that a career State employee was discharged, demoted, or suspended for just cause rests with the employer. In all other contested cases, the burden of proof rests on the employee.

(e) The Office of Administrative Hearings may award attorneys' fees to an employee where reinstatement or back pay is ordered or where an employee prevails in a whistleblower grievance. The remedies provided in this subsection in a whistleblower appeal shall be the same as those provided in G.S. 126-87.

(f) The Office of Administrative Hearings shall report to the Office of State Human Resources and the Joint Legislative Administrative Procedure Oversight Committee on the number of cases filed under this section and on the number of days between filing and closing of each case. The report shall be filed on a semiannual basis. (2013-382, ss. 6.1, 9.1(c); 2014-115, s. 55.3(d).)

§ 126-34.1: Repealed by Session Laws 2013-382, s. 6.1, effective August 21, 2013, and applicable to grievances filed on or after that date.

§ 126-34.2. Alternative dispute resolution.

In its discretion, the Commission may adopt alternative dispute resolution procedures for the resolution of matters constituting and not constituting grounds for a grievance under this Article. Any matters not constituting grounds for an appeal under G.S. 126-34.02 shall not be heard by the Office of Administrative Hearings as a contested case. (1995, c. 141, s. 8; 2013-382, s. 6.1.)

§ 126-34.3. Judicial review of fee awards.

With respect to a decision of the Office of Administrative Hearings assessing or refusing to assess reasonable witness fees or a reasonable attorneys' fee, the decision shall be subject to judicial review in accordance with G.S. 126-34.02(a). The reviewing court may reverse or modify the decision of the Office of Administrative Hearings if the decision is unreasonable or the award is inadequate. An employee who obtains a reversal or modification of the Office of Administrative Hearings' decision in an appeal under this section shall be entitled to recover court costs and a reasonable attorneys' fee for representation in connection with the appeal. (2013-382, s. 6.1.)

§ 126-35. Just cause; disciplinary actions for State employees.

(a) No career State employee subject to the North Carolina Human Resources Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the agency through the agency grievance procedure for a final agency decision. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. If the employee is not satisfied with the final agency decision or is unable, within a reasonable period of time, to obtain a final agency decision, the employee may appeal to the Office of Administrative Hearings. Such appeal shall be filed not later than 30 days after receipt of notice of the final agency decision. The State Human Resources Commission may adopt, subject to the approval of the Governor, rules that define just cause.

(b) through (d) Repealed by Session Laws 2013-382, s. 6.1, effective August 21, 2013, and applicable to grievances filed on or after that date. (1975, c. 667, s. 10; 1989 (Reg. Sess., 1990), c. 1025, s. 2; 1991, c. 65, s. 7; c. 354, s. 5; c. 722, s. 1; 2000-190, s. 13; 2012-187, s. 8.4; 2013-382, ss. 6.1, 9.1(c).)

§§ 126-36 through 126-41: Repealed by Session Laws 2013-382, s. 6.1, effective August 21, 2013, and applicable to grievances filed on or after that date.

§ 126-42. Reserved for future codification purposes.

Article 9.

The Administrative Procedure Act and Modifications.

§§ 126-43 through 126-44: Repealed by Session Laws 1987, c. 320, s. 9.

§ 126-45: Repealed by Session Laws 1977, c. 866, s. 18.

§§ 126-46 through 126-50. Reserved for future codification purposes.

Article 10.

Interchange of Governmental Employees.

§ 126-51. Short title.

This Article shall be known and may be cited as the "North Carolina Interchange of Governmental Employees Act of 1977." (1977, c. 783, s. 1.)

§ 126-52. Definitions.

For purposes of this Article:

(1) "Assigned employee" means an employee of a sending agency who is assigned or detailed to a receiving agency as part of the employee's regular duties with the sending agency.

(2) "Employee on leave" means an employee on leave of absence without pay from a sending agency who becomes an employee of a receiving agency while on leave from the sending agency.

(3) "Receiving agency" means any division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government which, under this Article, receives an employee of another governmental division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government.

(4) "Sending agency" means any division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government which, under this Article, sends any employee thereof to another governmental division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government. (1977, c. 783, s. 1.)

§ 126-53. Authority to interchange employees.

(a) Any division, department, agency, instrumentality, authority, or political subdivision of the State of North Carolina is authorized to participate in a program of interchange of employees with divisions, departments, agencies, instrumentalities, authorities, or political subdivisions of the federal government, of another state, or of this State, as a sending agency or a receiving agency.

(b) The period of individual assignment, detail, or leave of absence under an interchange program shall not exceed two years.

(c) The temporary assignment of the employee may be terminated by mutual agreement between the sending agency and the receiving agency.

(d) Elected officials may not participate in a program of interchange under this Article. (1977, c. 783, s. 1.)

§ 126-54. Status of employees of sending agency.

(a) Employees of a sending agency participating in an exchange of personnel authorized by G.S. 126-53 may be considered during such participation to be either assigned employees or employees on leave.

(b) Assigned employees shall be entitled to the same salary and employment benefits to which they would be entitled as employees of the sending agency and shall remain employees of the sending agency for all purposes unless otherwise provided in this Article or in a written agreement between the sending agency and the receiving agency.

(c) Employees on leave shall have the same rights, benefits and obligations as other State or local employees subject to this Chapter who are granted leaves of absences, unless otherwise provided in this Article, or in a written agreement between the sending agency and the receiving agency.

(d) When a division, department, agency, instrumentality, authority or political subdivision of the State of North Carolina acts as a sending agency, employees participating in an exchange of personnel authorized by G.S. 126-53, whether considered assigned employees or employees on leave, shall have the same rights, benefits and obligations to participate in and receive benefits, including death benefits, from any retirement system of which they are members as employees of the sending agency, whether they are members of the Teachers' and State Employees' Retirement System, the North Carolina Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Retirement Fund, or other Retirement System which has been or may be established by the State for public employees; provided, however, that the receiving agency agrees to and makes the employer contributions and deducts from the salary of the employee the employee contributions for continued membership in such Retirement System. Provided, further, that if no contributions are paid into the appropriate Retirement System during the period that the employee participates in the exchange of personnel authorized by this Article, such employee shall remain entitled to death benefits resulting from his death during the period of the exchange. Provided, that where duplicate benefits would otherwise be payable on account of disability or death, the employee or his estate shall elect, within one year of the date of disability or death, which benefits to receive. (1977, c. 783, s. 1.)

§ 126-55. Travel expenses of employees from this State.

A sending agency in this State shall not pay the travel expenses of its assigned or on leave employees and shall not pay the travel expenses of such employees incurred in the course of

performing work for the receiving agency. Such expenses shall be borne by the receiving agency. (1977, c. 783, s. 1.)

§ 126-56. Status of employees of other governments.

(a) When a division, department, agency, instrumentality, authority or political subdivision of the State of North Carolina acts as a receiving agency, assigned employees of the sending agency remain the employees of the sending agency and continue to receive the employment benefits of the sending agency unless otherwise specified in a written agreement between the sending agency and the receiving agency.

(b) When a division, department, agency, instrumentality, authority or political subdivision of this State acts as a receiving agency, employees on leave from the sending agency will receive appointments as employees with the receiving agency and will be entitled to the same employment benefits as other employees of the receiving agency unless otherwise specified in a written agreement between the sending agency and the receiving agency. Such appointments may be made without regard to any rules or regulations of the receiving agency regarding the selection of employees; but all rules of the North Carolina Human Resources Act shall apply to State employees. (1977, c. 783, s. 1; 2013-382, s. 9.1(c).)

§ 126-57. Travel expenses of employees of other governments.

A receiving agency in the State of North Carolina may, in accordance with its travel regulations and travel regulations by law, pay the travel expenses incurred in the course of an assigned employee's duties or incurred in the course of the duties of an employee on leave with the receiving agency on the same basis as the travel expenses of regular employees are paid. (1977, c. 783, s. 1.)

§ 126-58. Administration.

The State Human Resources Commission and any State division, department, agency, instrumentality, authority or political subdivision participating in an interchange of employees program may promulgate rules or regulations necessary for the administration of such program, so long as such rules or regulations do not conflict with the provisions of this Article or any other provision of law. (1977, c. 783, s. 1; 2013-382, s. 9.1(c).)

§§ 126-59 through 126-63. Reserved for future codification purposes.

Article 11.

Governor's Commission on Governmental Productivity.

§§ 126-64 through 126-73: Repealed by Session Laws 1985, c. 479, s. 153(a).

Article 12.

Work Options Program for State Employees.

§ 126-74. Work Options Program established.

There is established a Work Options Program for State employees in the Office of State Human Resources to be administered by the State Human Resources Commission. The Director of the Office of State Human Resources shall assign an employee within the Office of State Human

Resources, to be known as the State Work Options Coordinator, to direct the Work Options Program as established in this Article. (1981, c. 917, s. 1; 1991, c. 65, s. 8; 2013-382, s. 9.1(c).)

§ 126-75. Work options for State employees.

(a) The following work options allowed State employees are to be included in the program administered under this Article:

(1) Flexible work hours as established by the State Human Resources Commission;

(2) Job sharing as permitted by the State Human Resources Commission;

(3) Permanent part-time positions as established under the North Carolina Human Resources Act.

(b) The State Human Resources Commission shall examine the present options listed in subsection (a) of this section available to State employees and other options the State Human Resources Commission may make available for a comprehensive program of work options for State employees. The State Human Resources Commission shall, with the concurrence of the agency, determine the need for additional permanent part-time positions within State Government and how increased use of these positions could benefit employee morale and productivity as well as increase the use of the available labor force. None of the provisions of this Article shall be administered to reduce the total number of hours per day a State office normally is open to serve the public. (1981, c. 917, s. 1; 2013-382, s. 9.1(c).)

§ 126-76. Promoting Work Options Program.

The State Human Resources Commission shall develop a program to expand the use of work options. This program shall include training sessions for agency personnel to instruct them in the use of work options available to State employees. The State Human Resources Commission shall also provide technical assistance to agency personnel in developing a Work Options Program for each agency or expanding existing programs in each agency. The Work Options Coordinator shall also identify personnel positions within the State Human Resources system which can effectively be structured in job sharing or permanent part-time employment positions. (1981, c. 917, s. 1; 2013-382, s. 9.1(c); 2014-115, s. 55.4(c).)

§ 126-77. Authority of agencies to participate.

The State Human Resources Commission shall request from each agency assistance in formulating the Work Options Program. Any division, department, agency, instrumentality or authority shall participate in the program of work options as established in this Article. (1981, c. 917, s. 1; 2013-382, s. 9.1(c).)

§ 126-78. Administration.

The State Human Resources Commission and any State division, department, agency, instrumentality or authority participating in the State Work Options Program shall promulgate rules necessary for the administration of the program. (1981, c. 917, s. 1; 1987, c. 827, s. 57; 2013-382, s. 9.1(c).)

§ 126-79: Repealed by Session Laws 2013-382, s. 7.7, effective August 21, 2013.

Article 13.

Veteran's Preference.

§ 126-80. Declaration of policy.

It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment for positions subject to the provisions of this Chapter with every State department, agency, and institution. (1987 (Reg. Sess., 1988), c. 1064, s. 1.)

§ 126-80.5. National Guard preference.

(a) It shall be the policy of the State of North Carolina that, in recognition and appreciation for service to the State and this country, and in recognition of the time and advantage lost toward the pursuit of a civilian career, an eligible member of the National Guard as defined in G.S. 126-81(4) shall be granted preference in employment for positions subject to the provisions of this Chapter with every State department, agency, and institution.

(b) In all evaluations of applicants for positions with this State or any of its departments, agencies, or institutions, a preference shall be awarded to all eligible members of the National Guard who are citizens of the State. This preference applies to initial employment and extends to other employment events, including a subsequent hiring, promotion, reassignment, or horizontal transfer.

(c) The provisions of this section shall be subject to the provisions of Article 9 of Chapter 143B of the General Statutes. (2021-180, s. 19E.4(a).)

§ 126-81. Definitions.

The following definitions apply in this Article:

(1) Period of war. – World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

(2) Veteran. – A person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.

(3) Eligible veteran. – Any of the following:
   a. A veteran who served during a period of war.
   b. The spouse of a disabled veteran.
   c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as a result of such service.
   d. A veteran who suffered a service-connected disability during peacetime.
   e. The spouse of a veteran described in sub-subdivision d. of this subdivision.
   f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who died for service-related reasons during peacetime.

(4) Eligible member of the National Guard. – Any of the following:

a. A resident of North Carolina who is a current member in good standing of either the North Carolina Army National Guard or the North Carolina Air National Guard.
b. A resident of North Carolina who is a former member of either the North Carolina Army National Guard or the North Carolina Air National Guard, whose discharge is under honorable conditions with a minimum of six years of creditable service.
c. The surviving spouse and dependent of a member of the North Carolina Army National Guard or the North Carolina Air National Guard who dies on State active duty either directly or indirectly as a result of that service.
d. The surviving spouse or dependent of a member of the North Carolina National Guard who died for service-related reasons during peacetime. (1987 (Reg. Sess., 1988), c. 1064, s. 1; 2021-180, s. 19E.4(b).)

§ 126-82. State Human Resources Commission to provide for preference.

(a) The State Human Resources Commission shall provide that in evaluating the qualifications of an eligible veteran against the minimum requirements for obtaining a position, credit shall be given for all military service training or schooling and experience that bears a reasonable and functional relationship to the knowledge, skills, and abilities required for the position. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.

(b) The State Human Resources Commission shall provide that if an eligible veteran has met the minimum requirements for the position, after receiving experience credit under subsection (a) of this section, he shall receive experience credit as determined by the Commission for additional related and unrelated military service. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.

(c) The State Human Resources Commission may provide that in reduction in force situations where seniority or years of service is one of the considerations for retention, an eligible veteran shall be accorded credit for military service.

(d) Any eligible veteran who has reason to believe that he or she did not receive a veteran's preference in accordance with the provisions of this Article or rules adopted under it may appeal that denial as provided by G.S. 126-34.01 and G.S. 126-34.02.

(e) The willful failure of any employee subject to the provisions of Article 8 of this Chapter to comply with the provisions of this Article or rules adopted under it constitutes personal misconduct in accordance with the provisions and promulgated rules of this Chapter, including those for suspension, demotion, or dismissal. (1987 (Reg. Sess., 1988), c. 1064, s. 1; 2007-286, s. 2; 2013-382, s. 9.1(c); 2014-115, s. 55.3(e).)

§ 126-83. Exceptions.

Notwithstanding G.S. 126-5, and notwithstanding provisions in that section that only certain Articles of this Chapter apply to some employees, this Article applies to all persons covered by this Chapter except those exempted by G.S. 126-5(c)(2), G.S. 126-5(c)(3), G.S. 126-5(c)(4), G.S. 126-5(c1), G.S. 126-5(c2), or G.S. 126-5(c3), but this Article does not apply to those persons

covered by G.S. 126-5(a)(2). G.S. 128-15 shall apply to those persons exempted from coverage of this Article, but shall not apply to any person covered by this Article. (1987 (Reg. Sess., 1988), c. 1064, s. 1; 1991, c. 65, s. 9.)

Article 14.

Protection for Reporting Improper Government Activities.

§ 126-84. Statement of policy.

(a) It is the policy of this State that State employees shall have a duty to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting any of the following:

(1) A violation of State or federal law, rule or regulation.
(2) Fraud.
(3) Misappropriation of State resources.
(4) Substantial and specific danger to the public health and safety.
(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels, or providing statements or testimony to agents and employees of legislative panels duly appointed by the President Pro Tempore and/or the Speaker of the House designated to conduct inquiries on behalf of such legislative panels. (1989, c. 236, s. 1; 1997-520, s. 5; 2018-41, s. 7; 2019-80, s. 1.)

§ 126-85. Protection from retaliation.

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6B, to the Joint Legislative Commission on Governmental Operations as authorized by G.S. 120-76, or to a

legislative committee as required by G.S. 120-19. (1989, c. 236, s. 1; 1997-520, s. 6; 2008-196, s. 2(b); 2008-215, s. 8; 2019-80, s. 2; 2021-180, s. 27.2(e); 2022-6, s. 15.1(b).)

§ 126-86. Civil actions for injunctive relief or other remedies.

Any State employee injured by a violation of G.S. 126-85 who is not subject to Article 8 of this Chapter may maintain an action in superior court for damages, an injunction, or other remedies provided in this Article against the person or agency who committed the violation within one year after the occurrence of the alleged violation of this Article; provided, however, any claim arising under Article 21 of Chapter 95 of the General Statutes may be maintained pursuant to the provisions of that Article only and may be redressed only by the remedies and relief available under that Article. (1989, c. 236, s. 1; 1991 (Reg. Sess., 1992), c. 1021, s. 6; 2013-382, s. 7.10.)

§ 126-87. Remedies.

A court, in rendering a judgment in an action brought pursuant to this Article, may order an injunction, damages, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorney's fees or any combination of these. If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney's fees. If in an action for damages the court finds that the employee was injured by a willful violation of G.S. 126-85, the court shall award as damages three times the amount of actual damages plus costs and reasonable attorney's fees against the individual or individuals found to be in violation of G.S. 126-84. (1989, c. 236, s.1)

§ 126-88. Notice of employee protections and obligations.

It shall be the duty of an employer of a State employee to post notice in accordance with G.S. 95-9 or use other appropriate means to keep his employees informed of their protections and obligations under this Article. (1989, c. 236, s. 1.)

§ 126-89: Reserved for future codification purposes.

Article 15.

Communications With Members of the General Assembly.

§ 126-90. Communications with members of the General Assembly.

A State employee's right to speak to a member of the General Assembly at the member's request shall not be directly or indirectly limited by the employee's supervisor or by any policy of the department, agency, or institution that employs that State employee. (1997-443, s. 22.2(a).)

§ 126-91: Reserved for future codification purposes.

§ 126-92: Reserved for future codification purposes.

§ 126-93: Reserved for future codification purposes.

§ 126-94: Reserved for future codification purposes.

Article 16.

Flexible Compensation Plan.

§ 126-95. Flexible compensation plan.

(a) The Director of the Budget may provide eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 a program of dependent care assistance as available under section 129 and related sections of the Internal Revenue Code of 1986, as amended. The Director of the Budget may authorize State departments, institutions, and agencies to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, the Director of the Budget may select a contractor only upon a thorough and completely competitive procurement process.

(b) Notwithstanding any other provisions of law relating to the salaries of officers and employees of departments, institutions, and agencies of State government, the Director of the Budget may provide a plan of flexible compensation to eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 for benefits available under section 125 and related sections of the Internal Revenue Code of 1986, as amended. This plan shall not replace, substitute for, or duplicate any benefits provided to employees and officers under Article 1A of Chapter 120 of the General Statutes and Articles 1, 3B, 4, and 6 of Chapter 135 of the General Statutes. The plan may, however, include offerings for products and benefits that are supplemental or additional to these statutory benefits. If a plan of flexible compensation is offered, then a TRICARE supplement shall be offered. In providing a plan of flexible compensation, the Director of the Budget may authorize State departments, institutions, and agencies to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process.

(c) As used in this section, the term "eligible officers and employees" means any officer or employee authorized to participate in the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, and the State Health Plan. (2007-117, s. 3; 2013-292, s. 4; 2013-382, s. 1.4; 2019-152, s. 2.)

§ 126-96: Reserved for future codification purposes.

§ 126-97: Reserved for future codification purposes.

§ 126-98: Reserved for future codification purposes.

§ 126-99: Reserved for future codification purposes.

State Personnel Commission Review of Contested Cases/Remedies Policy Policy

Contents:

Note: The following policies will govern the review by the State Human Resources Commission of employee grievance contested cases and the availability of remedies in such cases.

§ 1. Exercise of Commission Discretion

The State Human Resources Commission will weigh all relevant factors and circumstances in employee contested cases, including factors of mitigation and justification, in making a decision in a contested case of whether disciplinary action was imposed for just cause.

§ 2. Situations in which Attorney's Fees May Be Awarded

Attorney's fees may be awarded by the commission only in the following situations:

- the grievant is reinstated to the same or similar position from either a demotion or a dismissal;

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- the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated;
- the grievant is determined, by the Commission or by the agency's internal grievance procedure, to have been discriminated against in violation of G.S. 126-16 or subjected to unlawful workplace harassment in violation of G.S. 126-6;
- the grievant is awarded back pay as the result of a successful grievance alleging a violation of G. S. 126-7.1;
- the grievant is the prevailing party in the final appeal of a Commission decision; or
- any combination of the above situations.

Attorney's fees may be awarded when any of the above situations occur, either within the agency internal grievance procedure, in an appeal to the State Human Resources Commission or in an appeal of a Commission decision.

§ 3. Attorney's Fees May Be Awarded as a Result of a Settlement

Attorney's fees may be awarded as the result of settlement in the grievance procedure, either in the agency internal procedure or at the Personnel Commission level, providing such fees are explicitly incorporated as a part of a written settlement agreement signed by both parties. Attorney's fees shall not be awarded as the result of a settlement unless such fees are a specific part of the written settlement agreement.

§ 4. Back Pay

The Personnel Commission has the authority to award full or partial back pay in all cases in which back pay is a requested or possible remedy. The Personnel Commission may award full or partial back pay regardless of whether reinstatement is ordered.

Gross back pay shall always be reduced by any interim earnings, except that interim earnings from employment which was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance paid to the employee shall also be deducted from the gross back pay amount due. All applicable state and federal withholding taxes, including social security taxes shall be paid from the reduced gross back pay due; reduced gross back pay being gross back pay due minus interim earnings or unemployment insurance received. The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.

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Back pay shall include payment for all holidays which the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall never be a part of any back pay award. Shift premium pay shall be a part of a back pay award, if the grievant would have been entitled to such pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.

Employees shall not be entitled to any discretionary pay which may or may not have been awarded to them in the absence of the interruption in employment (for example, performance-based increases). Back pay shall include any across the board compensation which would have been included in the grievant's regular salary except for the interruption in employment. This includes one-time "bonuses", across the board legislative increments or across the board legislative pay increases.

If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the pro-rated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his longevity date, no adjustment for longevity pay shall be made in the back pay award. The pro-rated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.

Back pay must be applied for on Office of State Human Resources form PD-14. Copies of this form are available from the Office of State Human Resources, Personnel Commission Staff. PD-14 Statement of Back Pay One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available, suitable employment following separation from state government.

§ 5. Front Pay

Front pay is the payment of an amount to an employee above the regular salary, such excess amount representing the difference between the employee's salary in the current position and a higher salary determined to be appropriate due to a finding of discrimination or unlawful workplace harassment. Front pay may also result from an order of reinstatement to a position of a particular level, which the agency is unable to accommodate

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immediately. Front pay shall be paid for such period as the agency is unable to hire, promote or reinstate the employee to a position at the level ordered by the Personnel Commission. Front pay shall terminate upon acceptance or rejection of a position consistent with the order of the Commission. Front pay shall be available as a remedy in cases involving hiring, promotion, demotion or dismissal. Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and regular deductions for state and federal withholding taxes and employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the grievant. Shift premium pay and holiday premium pay shall not be available on front pay. Submission of a form PD 14 is not required for front pay.

§ 6. Leave

An employee shall be credited on reinstatement with all vacation leave which would have been earned except for the interruption in employment. An employee shall be credited on reinstatement with all sick leave which would have been earned except for the interruption in employment.

The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable. Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the credit for sick leave which would have been earned except for the dismissal.

§ 7. Health Insurance

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee elects reimbursement the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement.

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It is the responsibility of the employee to provide proof of insurance expenses incurred during the period of unemployment.

§ 8. Voluntary Programs or Benefits

Voluntary programs or benefits (such as the 401K program, voluntary health and life insurance programs or deferred compensation) are the choice of the employee and are the employee's responsibility. Such voluntary programs or benefits are not addressed by any awards under these regulations and Chapter 126, but may be governed by contractual provision with non-state agencies. Retroactive contributions or membership in any such program shall not be part of any remedy awarded by an agency or the State Human Resources Commission. To the extent that retroactive coverage or membership is available, the grievant is responsible for any action seeking to obtain such benefits.

§ 9. Interest

The state shall not be required to pay interest on any back pay award.

§ 10. Reinstatement

As used in this policy, reinstatement means the return to employment of a dismissed employee, in the same or similar position, at the same pay grade and step which the employee enjoyed prior to dismissal. Reinstatement may also refer to the promotion of a demoted employee to the same pay grade and step as the employee was demoted from.

§ 11. Recommendation of Disciplinary Action

The State Human Resources Commission shall have the authority to recommend to the respondent agency that disciplinary action be imposed as a result of any employee's failure to observe state policy and procedures in effecting disciplinary actions and dismissals.

§ 12. Removal of Material from Personnel File

The State Human Resources Commission shall have the authority to order the removal of any material in a personnel file which it finds to be inaccurate or misleading.

State Personnel Commission Review of Contested Cases/Remedies Policy

§ 13. Causes for Reinstatement

The State Human Resources Commission shall order reinstatement from dismissal or demotion only upon a finding of lack of substantive just cause or discrimination or unlawful workplace harassment prohibited by G.S. 126-16 or G.S. 126-36. For the purpose of this policy, and in addition to those matters normally constituting just cause, failure to issue the required number and kind of warning or other disciplinary actions prior to dismissal for job performance shall also be considered to constitute a lack of substantive just cause.

§ 14. Remedies for Procedural Violations

Failure to give written notice of applicable appeal rights in connection with a dismissal, demotion or suspension without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the time in which to file an appeal. The extension shall be from the date of the procedural violation to no more than 30 calendar days from the date the employee is given written notice of applicable appeal rights.

Failure to give specific reasons for dismissal, demotion or suspension without pay shall be deemed a procedural violation. The Personnel Commission, in its discretion, may award back pay, attorney's fees, or both for such a violation. Back pay or attorney's fees, or both, may be awarded for such a period of time as the Commission determines, in its discretion, to be appropriate under all the circumstances.

Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. Further, the remedy for this violation shall require that the employee be granted back pay from the date of the dismissal until a date determined appropriate by the commission in light of the purpose of pre-dismissal conference. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

§ 15. Suspension Without Pay

The State Human Resources Commission shall order back pay in those cases in which it is determined that a suspension without pay lacked substantive just cause or was an act of discrimination prohibited by G.S. 126-16 or unlawful workplace harassment prohibited by G.S. 126-36.

State Personnel Commission Review of Contested Cases/Remedies Policy

§ 16. Discrimination Or Unlawful Workplace Harassment

In those cases in which the Personnel Commission finds an act of discrimination or unlawful workplace harassment prohibited by G.S. 126-16, G.S. 126-36 or G.S. 126-36.1, the Commission may order reinstatement, back pay, transfer, promotion, or other appropriate remedy. The Commission shall also have the authority in such cases to order other corrective remedies to ensure that the same or similar discriminatory or harassing acts do not recur.

§ 17. Remedies: Salary Adjustment

No department, agency or institution may use within-grade salary adjustments as a method of resolving any grievance, contested case or lawsuit without advance notice to the Office of State Human Resources and the specific, written approval of the State Human Resources Director and the State Human Resources Commission. The only exception shall be such an adjustment in the context of a front pay award ordered by the State Human Resources Commission pursuant to this policy. Any within-grade salary adjustment proposed to be approved by the State Human Resources Director and the State Human Resources Commission must be in compliance with existing salary administration policies or shall have prior approval as an exception to or waiver from such policies.

§ 18. Settlements/Consent Agreements in Grievances, Contested Cases

Any settlement or consent agreement in a grievance or contested case which requires the processing of personnel action forms by the Office of State Human Resources must be approved by the Office of State Human Resources before such personnel actions forms will be processed. Approval by the Office of State Human Resources shall be indicated by the signature of the State Human Resources Director or his designee in an appropriate place on the settlement or consent agreement. This provision shall not be construed to require Office of State Human Resources approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Human Resources Commission. This provision shall also not be construed to

State Personnel Commission Review of Contested Cases/Remedies Policy

require approval of any settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.

Prior approval from the Office of State Human Resources and the State Human Resources Commission must be secured when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from existing personnel policy. This compliance shall be in addition to the requirements of this policy. Any settlement or consent agreement which contains a provision which requires an exception to or variance from existing personnel policy must be reviewed and approved by the State Human Resources Commission prior to the processing of any personnel action forms by the Office of State Human Resources action forms, required by the provisions of any settlement or consent agreement which has not been approved by the Office of State Human Resources or the State Human Resources Commission as required by policy, shall not be processed by the Office of State Human Resources and shall be returned to the agency without action. Any settlement or consent agreement which does not require action by the Office of State Human Resources or the State Human Resources Commission does not require the approval of either body to be effective.

§ 19. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126

It is compliant with the Administrative Code rules at:

- 25 NCAC 01

§ 20. History of This Policy

Date	Version
March 1, 2007	•
	•
	•
	•

State Human Resources System Policy

Contents:

§ 1. Statutory Authority

Chapter 126 of the North Carolina General Statutes provides for the establishment of a system of Human Resources administration under the Governor. This system is based on accepted principles of Human Resources administration, with application of the best methods as evolved in government and industry.

Citizens have a strong interest in good Human Resources administration in government. The way in which managers select, motivate, develop, and advance employees can have a major impact on the quality of government services. Human Resources administration in government must reflect the best tradition and highest aspirations of our society, maintain the dignity of individual employees, and enable them to participate meaningfully in establishing and achieving program objectives and goals.

§ 2. Definition and Responsibility for Human Resources Administration

Human Resources Administration includes the attraction, selection, motivation, leadership, understanding, and utilization of employees as individuals and as members of a work group in accomplishing the objectives of State government.

Responsibility for the various elements of Human Resources administration is vested in many sources, including the Legislative body, the Governor, the State Human Resources Commission, Human Resources staff, and every manager and supervisor in State government. The Legislature has given direction to the Governor and the State

Human Resources Commission through Chapter 126 of the General Statutes. Human Resources staff, managers and supervisors follow the policies established by the Commission in carrying out an effective program to provide efficient public service.

State Human Resources System Policy (cont.)

§ 3. Coverage of Human Resources Administration System

This Human Resources administration system is applicable by statute to general employment in State government; exemptions are specifically cited in G.S. 126-5 (see Statute in this manual).

There are activities in State government funded either totally or in part by Federal funds through a grant-in-aid program. Federal Statutes require that Human Resources management, in certain of these programs, be exercised within specified Standards for a Merit System of Human Resources Administration. The State Human Resources Commission is responsible for establishing policies, subject to the approval of the Governor, for a Human Resources system that satisfies the Federal Standards based on the Federal statutory and regulatory provisions. Employees within programs subject to the Federal Standards are covered by the policies for general employment, and in some instances, also by policies applicable only to a Federal Merit System of Human Resources Administration

§ 4. Delegation of Authority/Decentralization of Human Resources Administration System

The Office of State Human Resources, under the direction of the State Human Resources Director, has sole responsibility for the implementation of the State Human Resources Commission's rules, policies and procedures. The State Human Resources Director has the exclusive authority for final approval of all Human Resources actions under these rules and policies.

The State Human Resources Director may delegate authority for final approval and accountability of certain Human Resources actions to the heads of State agencies and universities, and by extension, to the head of their Human Resources administration function. The decision to delegate authority for final approval of certain Human Resources actions or not to delegate, as well as the matters to be delegated, shall be at the discretion of the State Human Resources Director.

The delegation decision by the State Human Resources Director shall be made based upon these factors:

- the acceptance of accountability for their own Human Resources functions by agency heads and chancellors under a delegation of authority from the State Human Resources Director;

State Human Resources System Policy (cont.)

- the history of agency cooperation and compliance with statutes relating to Human Resources administration and with established Commission policies, rules, procedures and related corrective actions;
- a pre-assessment of the compliance capability of the agency's Human Resources functions and the Human Resources staff;
- the demonstrated knowledge and expertise in the administration of the Commission's policies, rules and procedures by the Human Resources staff of the agency;
- the maintenance of an adequate staff in the agency's Human Resources functions, including an appropriate number of professional level positions commensurate with the size and complexity of the agency; and
- the maintenance of a quality control plan within the agency's Human Resources functions designed to improve the professionalism of the Human Resources staff and to produce accurate data in a current and timely manner.

Delegation shall be achieved through decentralization agreements which shall specify agency responsibility for implementing Human Resources Commission programs and shall identify those Human Resources actions for which the agency shall have final approval authority. The agreement shall provide that the decentralized Human Resources administration authority may be unilaterally withdrawn or modified by the State Human Resources Director based upon demonstrated inability or unwillingness on the part of the agency or university to maintain the level of Human Resources administration as measured by factors above in this policy.

The Office of State Human Resources shall perform routine, ongoing monitoring of all agency and university decentralization agreements for compliance with specified levels of authority and with Commission rules, policies and procedures. The Office of State Human Resources shall perform periodic on-site performance audits. These monitoring and auditing procedures shall be in accordance with accepted auditing principles and with the advice of the State Auditor.

§ 5. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126

State Human Resources System Policy (cont.)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01

§ 6. History of This Policy

Date	Version
1949	• Office State Human Resource Department (then Office of State Personnel) established by General Assembly.
July 1965	• State Human Resource Commission established
July 1, 1999	• Revised
February 1, 2002	• Revised
October 13, 2005	• Revised
October 1, 2006	• Revised
July 1, 2007	• Revised
June 1, 2008	• Revised

Supplementary Salary Policy

Contents:

§ 1. Definition

Supplemental salary is any compensation from an affiliated public charity, foundation or other private source paid to a state employee for services that are part of the employee's regular job and is in addition to the employee's base salary paid by the state and any other compensation authorized by State Personnel Commission policies but which the private source is not obligated to pay and on which the Retirement System is not obligated to accept contributions. (The decision as to whether to accept retirement contributions made by the employing agency and the employee is solely that of the Teachers' and State Employees' Retirement System.)

§ 2. Initial Approval

Receipt of supplements shall be subject to the approval of the agency head and must also be approved by the State Personnel Commission.

Requests shall be submitted to the Office of State Personnel and shall include documentation of relevant labor market information and any other information that the agency head believes justifies a salary supplement. It shall also include why the payment of the supplement will not result in any conflict of interest.

In the absence of a conflict of interest, the State Personnel Commission shall base its decision on documented labor market information submitted by the agency and any additional information of prevailing practices in the applicable labor market supplied by the Office of State Personnel.

§ 3. Changes

Any proposed increases in the amount of the supplemental salary shall be subject to the same approval process as the initial supplement.

Any decrease or cancellation of the supplemental salary shall be reported but does not require approval.

Supplemental Salary Policy (cont.)

§ 4. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2); N.C.G.S. § 126-4(10)
- 25 NCAC 01D .0115

§ 5. History of This Policy

Date	Version
September 1, 2006	First version - New policy requiring State Human Resources Commission approval of any supplemental pay from a charity, foundation or other private source.

Technical Adjustments to the Pay Plan Policy

Contents:

§ 1. Policy

Technical adjustments to the pay plan are refinements to the pay system approved by the State Human Resources Commission that include, but are not limited to, such actions as:

- establishing special pay plans,
- renumbering salary ranges,
- changing the width of salary ranges,
- changing salary range minimums, midpoints, or maximums,
- computing the quartiles, and
- adding or deleting salary ranges.

This type of change is not directly related to current labor market fluctuations, and therefore is not defined as a Salary Range Revision. Neither are technical changes related to position classification changes, and therefore are not Reallocations.

§ 2. Salary Rate

Technical adjustments to the pay plan do not create entitlement or authorization to change individual employee salaries.

§ 3. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

It is compliant with the Administrative Code rules at:

- 25 NCAC 01F .0100

Technical Adjustments to the Pay Plan Policy (cont.)

§ 4. History of This Policy

Date	Version
January 1, 1991	• First version.
October 1, 2020	• Policy reviewed by Total Rewards – Classification and Compensatic Division, to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory rule(s), and other policies. No substantive changes. Reported to S October 1, 2020. • Two revisions have been proposed: • Correcting the terminology from “length” of salary ranges to “width” salary ranges • Adding language to reflect “changing salary range minimums, midpc maximums” to account for situations where technical corrections ma required due to minor calculation errors, rounding issues, or legislat mandated changes that are not labor market-based range revisions determined through standard OSHR market pricing methodologies.

Teleworking Program Policy

Contents:

§ 1. Purpose

The State of North Carolina is committed to offering innovative workplace flexibilities. This policy permits agencies to designate employees to work at alternate work locations for all or part of the workweek to promote general work efficiencies, enhance competitive recruitment and retention advantages compared with other employers, improve utilization of state facilities, and meet environmental challenges. G.S. 126-1 requires the best methods of personnel administration as evolved in business and industry. Therefore, the Office of State Human Resources (OSHR) has established the following policy to assist agencies in developing teleworking programs.

Teleworking programs must be designed so that a reasoned determination can be made as to the benefits of teleworking within North Carolina State government. A public employer has a special obligation to ensure that employees and work resources are being used efficiently and productively.

§ 2. Eligible Employees

All full-time and part-time permanent, probationary, temporary and time-limited employees may be eligible to participate in this program if the employee's work is deemed by the agency or university as suitable for teleworking and the telework arrangement is to the benefit of the agency or university.

Teleworking is not a universal employee benefit or entitlement. The decision whether to allow an employee to participate full-time or part-time in a teleworking program is at the

Teleworking Program Policy (cont.)

discretion of management. Agencies and universities may exercise discretion to determine that employees are ineligible to participate in a teleworking agreement under the following conditions:

- The employee's position requires regular onsite work activities that cannot be completed at an alternative work location;
- The employee's alternate work location does not meet the requirements of the job or the agency/university;
- The employee violates the terms of the teleworking agreement;
- The employee has an active disciplinary action related to unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance;
- The employee has received a performance rating of "does not meet expectations" on any goal or value on their most recent performance evaluation;
- The employee is unable to consistently demonstrate the ability to complete tasks and assignments on a timely basis;
- The employee receives disciplinary action or their performance decreases while already participating in a teleworking program; or
- If an agency or university requires a period of onsite work for new appointments or probationary employees prior to approving teleworking.

§ 3. Definitions

For purpose of this policy, the terms below mean the following:

Alternate Work Location: a worksite other than an agency or university worksite; may be an employee's home or satellite office where official State business is performed.
Duty Station: the employee's designated onsite agency or university worksite is considered their duty station. For field-based employees, an employee's home may be considered the duty station, if approved by the agency or university.

Teleworking Program Policy (cont.)

Field/home-based Employee: field/home-based employees are required by the agency/university to work outside the agency or university worksite based on the service they provide or the nature of work. The work of field/home-based employees is mostly performed by traveling to various locations, within a region or working from home.
Full-time Telework: type of telework in which an employee works from an alternate work location on all workdays, except those occasional days when required to report to a physical location, including the duty station, or other approved sites, for meetings, training or other onsite duties, or as directed by a manager.
Part-time/Hybrid Telework: type of telework arrangement in which an employee works from an alternate work location less than a full-time basis but on a recurring schedule.
Telework/Teleworking: a flexible work arrangement in which managers direct or permit employees to perform their job duties away from their duty station, in accordance with their same performance expectations, adherence to workplace policies and professional standards, and other approved or agreed-upon terms. It does not include field/home-based employees, occasional or sporadic teleworking, or work performed at a temporary worksite for a limited duration.
Teleworker: an employee engaged in teleworking.
Teleworking Agreement: a written agreement required for all employees teleworking regularly that details the terms and conditions by which an employee is allowed to engage in teleworking.
Work Schedule: the employee's regular recurring hours of work at the agency or university worksite and/or an alternate work location.

§ 4. Agency and University Responsibilities

Agencies and universities shall:

- Incorporate effective management practices such as clear communication, goal setting, and regular contact with employees engaged in teleworking programs.

Teleworking Program Policy (cont.)

- Ensure that the overall functions of the organization are not compromised by telework.
- Provide training to support employees and managers in teleworking.
- As changes occur, identify in the HR-Payroll System whether employees are teleworking full-time in-state, full-time out-of-state, part-time in-state, or part-time out-of-state, and identify the location of any teleworking.
- Report teleworking activities for the previous calendar year to OSHR annually on or before March 1[1], beginning with the report for calendar year 2023 submitted on March 1, 2024. This report, at a minimum, will include:
    - Data on the number and percentage of employees participating in full-time teleworking, part-time teleworking, and full-time onsite by demographic data (race and ethnicity, gender, age range) and by occupational classification.
    - Out-of-state teleworking arrangements.
    - Teleworking arrangements approved as a part of an ADA accommodation.
    - Assessment of their teleworking program, including goals, benefits, challenges, and best practices.

Advisory Note: To improve recruitment, agencies are encouraged to mark jobs with telework options in the state's applicant tracking system. Agencies can use the following text in the job posting to make clear that telework is not an entitlement:
"Any telework will be under the conditions of the state Teleworking Program Policy and the employer may end any teleworking arrangement at any time in the employer's sole discretion."

[1] The initial report, covering July 1, 2021 through June 30, 2022, was due September 30, 2022. The next report, covering the 2023 calendar year, is due March 1, 2024.

Teleworking Program Policy (cont.)

§ 5. OSHR Responsibilities

OSHR shall:

- Provide guidance to State agencies in developing teleworking programs.
- Prepare training on teleworking expectations for agency and university HR offices, managers and employees.
- Provide instructions for annual teleworking reporting requirements to agencies and universities by December 31 each year.
- Consult with agencies regarding the State goal established in statute (N.C.G.S. § 143-215.107C(f)) to reduce State employee vehicle miles traveled in commuting by 20% without reducing total work hours or productivity.

§ 6. Designation of Position/Employee

Agencies and universities may allow employees to engage in teleworking in compliance with this policy. Each agency and university that permits teleworking must establish internal policies and procedures that:

- Identify the criteria for positions that are designated as appropriate for full-time or part-time telework;
- Identify the criteria for selecting employees who are eligible to engage in teleworking; and
- Ensure that employees who remain at the agency/university worksite do not incur additional duties routinely performed by another employee due to revisions to the Teleworker's duties or schedule specifically for the purpose of enabling them to telework.

Based on business necessity, an agency or university may require an employee to telework or not to telework.

§ 7. Conditions of Employment

The policies and procedures that apply to the agency or university worksite shall remain the same for Teleworkers. These include, but are not limited to, workplace policies,

Teleworking Program Policy (cont.)

professional standards of conduct, and performance management. Teleworking assignments do not change the conditions of employment or required compliance with policies and rules.

§ 8. **Teleworking Agreements**

All teleworking agreements shall:

- Include the responsibilities of both the agency or university and the employee;
- Be reviewed by the manager and employee at least annually, to coincide with, where possible, the beginning of the employee evaluation cycle; and
- Be signed by the employee and manager, and other members of management designated by the agency or university.

If an employee transfers to another position or changes reporting relationships, any telework agreement between the previous manager and employee does not carry forward. The employee is not guaranteed eligibility for telework in the new position or when a reporting relationship changes. Each participant must sign a teleworking agreement that contains the terms of the teleworking arrangement. The signed teleworking agreement will be maintained in the agency or university's human resources office as part of the employee's personnel file. At a minimum, the teleworking agreement shall define the parameters of the teleworking arrangement and shall comply with the policy provisions below:

1. Compensation and Benefits: An employee's compensation and benefits will not change when they telework.
2. Safety of Alternate Work Location: An agency or university shall establish safety procedures. The agency or university shall, at a minimum, obtain an annually signed safety attestation from each Teleworker. The employee shall verify:
   a. The alternate work location utilizes furniture, equipment, and other materials supplied by the employee, agency or university that is in compliance with established safety requirements, is free from hazards, and is ergonomically appropriate.

Teleworking Program Policy (cont.)

b. The employee shall provide written notice to their agency or university prior to any change in location or condition of the alternate work location.
c. The employee utilizes the same safety rules and practices applicable to agency or university worksite whenever at the alternate work location.
d. The employee shall follow usual agency or university procedures for immediate reporting of work-related illness or injury occurring at the alternate work location.

3. General Liability: The agency or university assumes no responsibility for damages to an employee's personal or real property during the performance of official duties while teleworking or while using the State's equipment in the employee's alternate work location. Any costs and/or losses incurred in teleworking are the responsibility of the employee.

Advisory Note: North Carolina workers' compensation laws make the State responsible for work-related illnesses or injuries that occur within the course and scope of employment that occur at an employee's alternate work location during the employee's approved work hours. It is important to have a fully executed teleworking agreement on file, which specifically details the work hours, alternate work location and employee's obligations while teleworking.

4. Restricted-Access Materials: The security, confidentiality and integrity of agency/university records and information must be protected at all times in teleworking arrangements and must comply with all information security requirements that would apply at the duty station.

   Teleworkers must receive written authorization from managers before working on restricted-access information or materials at alternate work locations. It is the responsibility of the Teleworker to protect and manage original documents, records and other sensitive and confidential information that an agency or university has authorized the Teleworker to carry to the alternate work location. Teleworkers shall agree to follow agency/university-approved security procedures to ensure confidentiality and security of data.

5. Schedule and Work Hours: The total number of hours that employees are expected to work will not change, regardless of work location. This does not, however, restrict the use of alternative work schedules. Agencies have the

Teleworking Program Policy (cont.)

flexibility to allow employees to work a regular work schedule that is different from the department's normal operating hours. All hours worked by employees subject to the Fair Labor Standards Act are compensable. The working of overtime and/or accrual of compensatory time is subject to the same policies and approvals as are in place at the agency/university worksite. Agencies must ensure procedures are in place to track and document the work hours of Teleworkers.

Employees shall apply themselves to their work during designated work hours and not engage in other activities that are not work-related.
Teleworkers must make advance arrangements for dependent care (e.g., childcare or eldercare) to ensure a productive work environment. Telework is not intended to be a substitute for day care or other personal obligations. It is expected that the Teleworker shall continue to make arrangements for dependent care to the same extent as if the Teleworker was working onsite. Adherence to all leave policies and procedures for use and approval is expected.

Refer to the state Hours of Work and Overtime Compensation policy for guidance on when to count travel time as hours worked if a Teleworker reports to the worksite.

Any requirement for a Teleworker to report to the onsite duty station is not reimbursable for mileage (unless the employee is designated as a field-based employee).

6. Use of Leave: Requests to use sick, vacation and other leave during a designated telework day is subject to the same practice, approvals and policies of employees at the agency or university worksite. The accrual of leave is also subject to the same policies as are in place for employees who do not telework.
7. Equipment and Software: An agency or university shall set forth in their policies and procedures conditions for who is responsible to pay for telephone and services required by teleworkers to perform their duties, including other media, laptops, internet access, and cell phones. Teleworking agreements must include an inventory of State property authorized for use at the employee's alternate work location.
8. Performance Management: Performance standards for Teleworkers must be the

Teleworking Program Policy (cont.)

same as performance standards for non-teleworking employees. All management expectations for performance must be clearly addressed in the employee's performance workplan, must follow the state Performance Management Policy, and expectations related to accountability must be consistent between both Teleworkers and non-teleworking employees. Teleworkers may be required to complete activity sheets, tracking logs, etc. as an expectation in the teleworking agreement.

9. Long-distance and Out-of-state Teleworking: To the greatest extent practicable, agencies/universities shall principally employ individuals who reside within or in close proximity to the State of North Carolina. Agencies/universities should avoid long-term flexible work arrangements for employees who reside outside a reasonable commuting distance. Agencies/universities may limit teleworking to within the State and should define a reasonable commuting distance. Agency or university teleworking programs may provide limited exceptions to the reasonable commuting distance based on operational needs, including but not limited to, recruitment of candidates with unique or scarce skills, or arrival or departure of employees for a transitional period of relocation.

   Agencies/universities may consider out-of-state teleworking arrangements. An agency or university head or designee must assess and approve the impact on the agency or university before approving a current employee's request to telework out-of-state or extending a job offer to an out-of-state resident that includes teleworking. The agency or university human resources director shall consult with the chief financial officer and general counsel to establish the assessment process.

   For all appointments, agencies shall include expectations in teleworking agreements for reporting to the duty station for required onsite training and meetings, as determined by the agency or university. Teleworkers may not charge mileage for travel between their place of residence and their duty station. If an employee is approved to telework out-of-state, the Teleworker is responsible for any tax implications.

Teleworking Program Policy (cont.)

The employee must notify the agency/university of any changes in the work location.

10. Reasonable Accommodation under the ADA: Any employee's request to telework as a reasonable accommodation under the Americans with Disability Act (ADA) will be administered consistent with the statewide Reasonable Accommodation Policy. Allowing an employee to work at an alternate work location may be a viable outcome of the interactive accommodations process under the ADA if the employee's qualifying disability prevents them from performing the essential functions of their job at their designated duty station, unless the request creates an undue hardship on the employer.
11. Temporary Teleworking Agreements: Temporary teleworking agreements or modifications to teleworking agreements established under an agency/university's teleworking program or designee may become necessary as an agency or university responds to hazardous weather, pandemics, physical attacks, or other events that may require the temporary closure of a state agency or university facility.
    a. Agency and University Responsibilities:
        i. Consistent with emergency planning and COOP requirements, all state agencies must develop a procedure which authorizes all eligible employees to telework during a continuity event.
        ii. This procedure must contain information on:
            1. Which employees may be expected to telework in case of any emergency; and
            2. What is expected of those employees.
12. Recruitment and Retention: Agencies/universities may use telework as a tool to help attract, recruit, and retain the best workforce possible, including as an incentive for eligible hard-to-fill positions. Teleworking may attract applicants interested in reduced commuting time and cost, and increased work-life balance.
13. Adverse Weather/Emergency Closing**:** Teleworkers who are designated as non-emergency are expected to continue teleworking, if possible, when on-site

Teleworking Program Policy (cont.)

workers at their agency or university are directed to leave or not report to their duty station due to an adverse weather event or emergency closing. Non-Emergency employees who have the capability to telework and who are scheduled to go to their onsite duty station but are unable due to adverse weather or office closure will be expected to telework to the extent possible. Non-Emergency employees who have the capability to telework but do not during an adverse weather event or emergency closing shall account for lost time in accordance with the Adverse Weather or Emergency Closing policy.

14. Mail Management: Agencies/universities shall develop procedures for Teleworkers receiving mail and sending outgoing mail at an alternate work location.

§ 9. Termination or Modification of Teleworking Agreement

The agency or university may terminate or modify the teleworking agreement at its discretion. Any modification or termination of teleworking agreements shall be in writing. When a teleworking agreement is terminated, employees are responsible for returning all State property and all work products to the agency worksite and resume onsite work within the timeframe provided by the agency or university. An employee who refuses to comply with the termination or modification of a teleworking agreement will be subject to disciplinary action. Termination or modification of a teleworking agreement by management is not a grievable issue unless the basis of the grievance is consistent with a grievable issue identified in the State Human Resources Employee Grievance Policy.

§ 10. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5) authorizes the State Human Resources Commission to create policies governing “[h]ours and days of work … and other matters pertaining to the conditions of employment.”

This policy is consistent with N.C. Session Law 1999-328 § 4.8, which required the Office of State Personnel (now OSHR) to “implement a policy that promotes telework/telecommuting

Teleworking Program Policy (cont.)

for State employees," and the Administrative Code rules on teleworking programs, 25 NCAC 01C .0801 to .0813.

§ 11. History

Date	Version
October 21, 1999	New policy outlining requirements and guidelines for establishing a teleworking program.
August 17, 2000	Policy changed to conform to new rules.
September 7, 2017	Policy revised to delete all reference to trainee appointments, per appointment types and career status November 1, 2013.
June 3, 2021	Policy reviewed by Total Rewards-Salary Administration Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. . Reported to SHRC on June 3, 2021. Changes included: 1. Purpose section was revised to provide clarity and to improve readability. 2. The advisory note regarding teleworking program design has been moved from the text box into the body of text 3. Covered employees section was renamed Eligible Employee a. Updated to clarify employees may be eligible to participate in this program if the employee's work is deemed by the agency or university as suitable for teleworking and the telework arrangement is to the benefit of the agency or university. b. Clarified the decision to allow an employee to participate full-time or part-time in a teleworking program is at the discretion of management and removed "is not appealable to the Human Resources Commission. c. Added the following: i. Teleworking is not a universal employee benefit or

Teleworking Program Policy (cont.)

	entitlement. Any teleworking arrangement is at the discretion of management. ii. Agencies and universities may exercise discretion to determine that employees are ineligible to participate in a teleworking agreement under the following conditions: 1. The employee's position requires regular onsite work activities that cannot be completed at an alternative work location; 2. The employee's alternate work location does not meet the requirements of the job or the agency/university; 3. The employee violates the terms of the teleworking agreement; 4. The employee has an active disciplinary action related to unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance; 5. The employee has received a performance rating of "does not meet expectations" on any goal or value on their most recent performance evaluation; 6. The employee is unable to consistently demonstrate the ability to complete tasks and assignments on a timely basis; 7. The employee receives disciplinary action or their performance decreases while already participating in a teleworking program; or 8. If an agency or university requires a period of onsite work for new appointments or probationary employees prior to approving teleworking. 4. The definition section was updated as follows: a. Alternate Work Location definition was updated to remove reference to central workplace and added agency or university worksite.

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	b. Deleted the definition for Central Workplace to include removal of all reference to central workplace throughout the policy. c. Added a definition for duty station d. Added a definition for the term field-based employee. e. Added a definition for full-time and part-time telework. Updated telework/teleworking definition to provide clarity and to differentiate from field-based employees. g. Updated the definition for teleworking agreement to indicate it is required for all employees teleworking regularly. h. Updated the definition for work schedule for clarity and to include agency or university worksite locations. 5. Added a new section for agency and university responsibilities which includes the following: a. Agencies and universities shall: i. Incorporate effective management practices such as clear communication, goal setting, and regular contact with employees engaged in teleworking programs. ii. Ensure that the overall functions of the organization are not compromised by telework. iii. Provide training to support employees and managers in teleworking. iv. Report teleworking activities for the previous calendar year to OSHR annually on or before March 1st which at a minimum will include: 1. Data on the number and percentage of employees participating in full-time teleworking, part-time teleworking, and full-time onsite by demographic data (race and ethnicity, gender, age range) and by occupational classification. 2. Out-of-state teleworking arrangements. 3. Teleworking arrangements approved as a part of an ADA

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	accommodation. 4. Assessment of their teleworking program, including goals, benefits, challenges, and best practices. v. Added an advisory note to indicate the period of July 1, 2021 through December 31, 2021 shall serve as a pilot for agencies that implement teleworking programs. Agencies shall report pilot teleworking activities to OSHR on or before March 1, 2022. 6. OSHR responsibilities section updated to clarify OSHR role to provide guidance to state agencies and to add the following: a. Prepare training on teleworking expectations for agency and university HR offices, managers and employees. b. Provide instructions for annual teleworking reporting requirements to agencies and universities by December 31 each year. 7. Agency Designates Position/Employee section renamed to Designation of Position/Employee: a. This section was updated to improve readability and to provide clarity, of an agency's designation of an employee to telework. b. Also added verbiage to ensure that employees who remain at the agency/university worksite do not incur additional duties routinely performed by another employee due to revisions to the Teleworker's duties or schedule specifically for the purpose of enabling them to telework. c. Deleted the advisory note indicating the opportunity to telework is a management option. 8. Conditions of Employment section was updated to provide clarity and improve readability. 9. Designation of Terms or Teleworking Arrangements section was renamed to Teleworking Agreements. a. This section was updated to provide clarity and to add parameters for teleworking agreements such as:

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	i. Be reviewed by the manager and employee at least annually, to coincide with, where possible, the beginning of the employee evaluation cycle. ii. Be signed by the employee and manager, and other members of management. iii. If an employee transfers to another position or changes reporting relationships, any telework agreement between the previous manager and employee does not carry forward. iv. The employee is not guaranteed eligibility for telework in the new position or when a reporting relationship changes. v. The signed teleworking agreement will be maintained in the agency or university's human resources office as part of the employee's personnel file. b. The Safety and Liability sub-section was renamed to Safety of Alternate Work Location. i. Additional verbiage was added to indicate the agency or university shall, at minimum, obtain an annually signed safety attestation from each Teleworker. The employee shall verify: 1. The alternate work location utilizes furniture, equipment, and other materials supplied by the employee, agency or university is in compliance with established safety requirements, is free from hazards, and is ergonomically appropriate. 2. The employee shall provide written notice to their agency or university prior to any change in location or condition of the alternate work location. 3. The employee utilizes the same safety rules and practices applicable to agency or university worksite whenever at the alternate work location. 4. The employee shall follow usual agency or university

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	procedures for immediate reporting of work-related illness or injury occurring at the alternate work location. c. A General Liability sub-section was added to indicate: the agency or university assumes no responsibility for damages to an employee's personal or real property during the performance of official duties while teleworking or while using the State's equipment in the employee's alternate work location. Any costs and/or losses incurred in teleworking are the responsibility of the employee. d. An advisory note was added to indicate: Workers' compensation: North Carolina workers' compensation laws make the State responsible for work-related illnesses or injuries that occur within the course and scope of employment that occur at an employee's alternate work location during the employee's approved work hours. It is important to have a fully executed teleworking agreement on file, which specifically details the work hours, alternate work location and employee's obligations while teleworking. e. The Restricted Access Materials sub-section was updated to clarify the security, confidentiality and integrity of agency/university records and information must be protected at all times in teleworking arrangements and must comply with all information security requirements that would apply at the duty station. Additional verbiage was added to read teleworkers must receive written authorization from managers before working on restricted-access information or materials at alternate work locations. It is the responsibility of the Teleworker to protect and manage original documents, records and other sensitive and confidential information that an agency or university has authorized the Teleworker to carry to the alternate work location.

Teleworking Program Policy (cont.)

	f. Work Hours sub-section was renamed to Schedule and Work Hours. i. Also updated to provide clarity and to establish agencies have the flexibility to allow employees to work a regular work schedule that is different from the department's normal operating hours. All hours worked by employees subject to the Fair Labor Standards Act are compensable. The working of overtime and/or accrual of compensatory time is subject to the same policies and approvals as are in place at the agency/university worksite. ii. Added verbiage to indicate teleworkers must make advance arrangements for dependent care (e.g., childcare or eldercare) to ensure a productive work environment. Telework is not intended to be a substitute for day care or other personal obligations. It is expected that the Teleworker shall continue to make arrangements for dependent care to the same extent as if the Teleworker was working onsite. Adherence to all leave policies and procedures for use and approval is expected. iii. Added verbiage to indicate: refer to the OSHR Hours of Work and Overtime Compensation policy for guidance on when to count travel time as hours worked if a Teleworker reports to the worksite. iv. Added verbiage to indicate: any requirement for a Teleworker to report to the onsite duty station is not reimbursable for mileage (unless the employee is designated as a field-based employee). g. Added a new sub-section of Use of Leave which indicates requests to use sick, vacation and other leave during a designated telework day is subject to the same practice, approvals and policies of employees at the agency or

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	university worksite. The accrual of leave is also subject to the same policies as are in place for employees who do not telework. h. The Use of Equipment and Software sub-section was updated to provide clarity and improve readability. Also established Teleworking Agreements must include an inventory of State property authorized for use at the employee's alternate work location. i. Added a new sub-section of Performance Management which indicates performance standards for Teleworkers must be the same as performance standards for nonteleworking employees. All management expectations for performance must be clearly addressed in the employee's performance workplan, must follow the state Performance Management Policy, and expectations related to accountability must be consistent between both Teleworkers and non-teleworking employees. Teleworkers may be required to complete activity sheets, tracking logs, etc. as an expectation in the teleworking agreement. j. Added a new sub-section of Long-distance and Out-of-State Teleworking which indicates to the greatest extent practicable, agencies/universities shall principally employ individuals who reside within or in close proximity to the State of North Carolina. Agencies/universities should avoid long-term flexible work arrangements for employees who reside outside a reasonable commuting distance. Agencies/universities may limit teleworking to within the State and should define a reasonable commuting distance. Agency or university teleworking programs may provide limited exceptions to the reasonable commuting distance based on operational needs, including but not limited to, recruitment of candidates with

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	unique or scarce skills, or arrival or departure of employees for a transitional period of relocation. i. Added verbiage to indicate agencies/universities may consider out-of-state teleworking arrangements. An agency or university head must assess and approve the impact on the agency or university before approving a current employee's request to telework out-of-state or extending a job offer to an out-of-state resident that includes teleworking. The agency or university human resources director shall consult with the chief financial officer and general counsel to establish the assessment process. ii. Added verbiage to indicate for all appointments, agencies shall include expectations in teleworking agreements for reporting to the duty station for required onsite training and meetings, as determined by the agency or university. Teleworkers may not charge mileage for travel between their place of residence and their duty station. If an employee is approved to telework out-of-state, the Teleworker is responsible for any tax implications. k. Added a new sub-section of Reasonable Accommodation under the ADA which indicates any employee's request to telework as a reasonable accommodation under the Americans with Disability Act (ADA) will be administered consistent with the statewide Reasonable Accommodation Policy. Allowing an employee to work at an alternate work location may be a viable outcome of the interactive accommodations process under the ADA if the employee's qualifying disability prevents them from performing the essential functions of their job at their designated duty station, unless the request creates an undue hardship. l. Added a new sub-section of Temporary Teleworking

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	Arrangements which indicates temporary teleworking arrangements or modifications to teleworking agreements established under an agency/university's teleworking program may become necessary as an agency or university responds to hazardous weather, pandemics, physical attacks, or other events that may require the temporary closure of a state agency or university facility. i. Added verbiage to indicate Agency and University Responsibilities: 1. Consistent with emergency planning and COOP requirements, all state agencies must develop a procedure which authorizes all eligible employees to telework during a continuity event. 2. This procedure must contain information on: a. Which employees may be expected to telework in case of any emergency; and b. What is expected of those employees. m. Added a new sub-section of Recruitment and Retention which indicates agencies/universities may use telework as a tool to help attract, recruit, and retain the best workforce possible, including as an incentive for eligible hard-to-fill positions. Teleworking may attract applicants interested in reduced commuting time and cost, and increased work-life balance. n. Added a new sub-section of Adverse Weather/Emergency Closing which indicates teleworkers who are designated as non-emergency are expected to continue teleworking, if possible, when on-site workers at their agency or university are dismissed due to an adverse weather event or emergency closing. Non-Emergency employees who have the capability to telework and who are scheduled to go to their onsite duty station but are unable due to adverse weather or office closure

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	will be expected to telework to the extent possible. Non-Emergency employees who have the capability to telework but do not during an adverse weather event or emergency closing shall account for lost time in accordance with the Adverse Weather or Emergency Closing policy. o. Added a new sub-section of Mail Management which indicates agencies/universities shall develop procedures for Teleworkers receiving mail and sending outgoing mail at an alternate work location. 10. Termination of Teleworking Arrangement was renamed to Termination or Modification of Teleworking Agreement. a. This section was also updated to provide clarity and to add any modification or termination of teleworking arrangements shall be in writing. When a teleworking agreement is terminated, employees are responsible for returning all state property and all work products to the agency worksite within the timeframe provided by the agency or university. b. Also clarified termination or modification of a teleworking arrangement by management is not a grievable issue unless the basis of the grievance is consistent with a grievable issue identified in the State Human Resources Employee Grievance Policy.
March 3, 2022	Amended the text of the Teleworking Program Policy to: (1) adjust the dates listed for the pilot program, (2) adjust the date when agencies' reports on teleworking are due to OSHR, and (3) add a reference to statutory provision establishing a state goal regarding teleworking. The existing Teleworking Program Policy calls for the period of July 1, 2021 through December 31, 2021 to serve as a pilot for agencies that implement teleworking programs; amended here to

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	last until June 30, 2022. Agencies were required to report pilot teleworking activities to OSHR on or before March 1, 2022; amended here to on or before September 30, 2022. This change will provide participating agencies with sufficient time to assess space utilization, and to conduct a robust review of their pilot teleworking programs. A robust review is particularly important because of the delays since some state agencies delayed their return-to-work process due to the Delta variant, and because some state workers were off their usual telework schedules during the recent wave from the Omicron variant. As additional background, Session Law 2021-180, Section 20.1(b), requires a separate report to the legislature on teleworking at state agencies. This legislative report is due April 1, 2023. The information OSHR will collect in the report due September 30, 2022 is designed to include the information due in the legislative report. An additional bullet point was added to the "OSHR Responsibilities" section to reflect a statutory provision added in 1997. Under the revised policy, agencies would be required to report on progress toward the State goal, established in N.C.G.S. § 143-215.107C(f), "to reduce State employee vehicle miles traveled in commuting by 20% without reducing total work hours or productivity." This statute is not mentioned in the current policy.
February 16, 2023	• Identify "hybrid" and "part-time" telework as both meaning a type of telework arrangement in which an employee works from an alternate work location less than a full-time basis but on a recurring schedule. • Expressly require agencies to continuously update in the HR-Payroll System (BEACON) whether employees are teleworking full-time or part-time, as well as the location of any teleworking. • Include sample language for job postings that agencies can use to advertise jobs with telework options.

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	• Remove the note that referred to the “period of July 1, 2021 through June 30, 2022” that served “as a pilot for agencies that implement teleworking programs.” Agencies are now using the lessons from that pilot period to refine their programs. • Emphasize that employees must notify the agency when their teleworking location changes.

TITLE VII OF THE CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, effective March 24, 1972

The Equal Employment Opportunity Act of 1972 makes very significant amendments to the Civil Rights Act of 1964

Under the 1964 Civil Rights Act, state and local governments and their employees were excluded from Title VII coverage. However, 1972 amendments to Title VII extend coverage to all state and local governments, governmental agencies, political sub-divisions (except for elected officials, their personal assistants and immediate advisors). The exemption for elected officials and their personal assistants and immediate advisors "is intended to be construed very narrowly and is in no way intended to establish an overall narrowing of the expanded coverage of state and local governmental employees."

The Equal Employment Opportunity Commission is charged with administering Title VII of the Civil Rights Act of 1964, Under the Act, EEOC has the authority to investigate and conciliate charges of discrimination because of race, color, religion, sex, or national origin by employers, unions, employment agencies, and joint apprenticeship or training committees. Under the 1972 amendments, EEOC no longer is limited to investigation and conciliation of charges. It can now bring an action through the U.S. Attorney General in a U.S. district court against a non-responsive party.

PROHIBITIONS

Title VII makes it unlawful for an employer to discriminate as to hiring, firing, compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex, or national origin. It also forbids employers to limit, segregate, or classify employees in any way that tends to deprive any individual of employment opportunities or adversely affects his employment status because of his race, color, religion, sex or national origin in advertisements relating to employment.

In addition, it is unlawful to discriminate on any of these five bases in apprenticeship, training, or retraining programs. It also is illegal to indicate a preference or a discrimination based on race, color, religion, sex or national origin in advertisements relating to employment.

These prohibitions, however, are subject to some exceptions.

EXCEPTIONS

A broad exception to the antidiscrimination prohibitions makes it clear that wage discrimination is permitted when based on merit, seniority, and quantity or quality of production.

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The broadest exception permits discrimination based on religion, sex, or national origin if this is because of a "bona fide occupational qualification." This applies to hiring, employment, referral, training, and advertising. The exception for bona fide occupational qualifications does not extend to discrimination based on race or color.

The law makes exceptions for discrimination resulting from a bona fide occupational qualification, provided it is "reasonably necessary to the normal operation" of the enterprise. This exception, however, is applicable only to discrimination based on religion, sex, or national origin. Title VII does not recognize a "bona fide occupational qualification" based on race or color.

RECRUITING AND HIRING

Essential to a nondiscriminatory employment policy under the federal laws is a basic procedure for recruiting and selecting employees that does not intentionally or inadvertently work to screen out minority group members.

An employer is not required to go out and hire a designated quota of minority group members. But a serious imbalance in the number of such workers in the work force, when compared to the proportion in the area, may suggest to federal officials that something is wrong with hiring policies.

Reliance on "walk-in" applicants and "word-of-mouth" recruiting may not be regarded as enough if the work force is predominantly white.

Quota Hiring

An explicit ban on any requirement of quota hiring is contained in Title VII. It reads:

"Nothing contained in this title shall be interpreted to require any employer....to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may by any employment agency...in comparison with the total number or percentage of persons exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in available work force in any community, State, section, or other area.

Prior Hiring Practices

The extent to which an employer's past hiring practices have resulted in a predominantly white work force may well determine the extent to which the federal agencies will require affirmative acts to recruit from minority group sources. EEOC has taken the position that an employer with a disproportionately low number of minority group members in his work force probably has

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acquired a reputation as a discriminatory employer. In such a case, the mere announcement of a policy of equal employment opportunity may not be regarded as enough to offset the past reputation.

An employer whose past hiring practices have resulted in a good minority group representation among production workers is not necessarily in the clear. A disproportionately low number of minority group members in white-collar, professional, or supervisory jobs suggest that special recruiting efforts are needed in these areas.

Walk-In Applicants

An employer with a predominantly white work force who relies largely on "walk-in" applicants to fill new jobs may not be in compliance with the Act.

Reliance on "word-of-mouth" recruiting will only perpetuate the existing racial make-up of the work force.

Once a good racial mix is achieved in the work force, an employer presumably could rely on walk-in applicants and word-of-mouth recruiting.

Advertising for Applicants

Except in a very rare case when religion, sex, or national origin is a bona fide job qualification, job offers in newspaper ads, posters, and the like must not indicate any limitation as to race, color, religion, sex, or national origin. Color and race can never be a bona fide job qualification.

Hiring Standards

Affirmative recruiting efforts that substantially increase the flow of minority group applicants will not satisfy the law if, because of unreasonably high standards for hire, few of these applicants are hired.

EEOC places considerable emphasis on hiring standards that are not job related, but rather reflect the norm of the white community. Employers must be prepared to demonstrate that their hiring standards do not automatically screen out applicants whose speech, dress, and personal work habits differ from those of the predominant group.

Hiring Standards: Police Records

It is unlawful to discharge or refuse to employ a minority group person because of a conviction record unless the particular circumstances of each case (e.g., the time, nature, and number of the convictions and the employee's immediate past employment record) indicate that

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employment of that particular person for a particular job is shown to be inconsistent with the safe and efficient operation of that job.

Hiring Standards: High School Diplomas

The U.S. Supreme Court has ruled that an employer who uses employment tests or other job screening standards, such as possession of a high school diploma, must be able to show that they are "demonstrably a reasonable measure of job performance." The court left open, however, the question of whether an employer may use tests or other screening requirements that take into account capability for future promotions.

Hiring Restrictions

Although a hiring policy may be "objectively and fairly applied" to applicants of all races, it may still discriminate against one racial group and as such be ruled discriminatory under Title VII.

Height Requirements - EEOC has held that an employer's rigid adherence to a height requirement for purposes of hiring, in the absence of a showing of business necessity, can have a discriminatory effect upon certain groups, a significantly higher percentage of who fall below such a standard, such as women and Spanish-surnamed Americans.

Appearance, Manner of Speech - Rejection of a job applicant because of his appearance and manner of speaking may be regarded as unlawful if the appearance and manner of speaking are peculiar to his race or national origin.

Pre-employment Inquiries, Concerning Race, Color, Religion, or National Origin - These are not, by themselves, a violation of Title VII. But EEOC regards such inquiries as totally irrelevant to an applicant's ability or qualification, except in those rare instances where religion or national origin is a bona fide occupational qualification. Hence, such inquiries, unless otherwise explained, may be regarded as evidence of discrimination.

A requirement that a photograph accompany an employment application also may be regarded as evidence of discrimination.

EMPLOYMENT CONDITIONS

The law against employment discrimination extends to virtually every aspect of the employer-employee relationship including discrimination with respect to "compensation, terms, conditions, or privileges of employment.

Wages

Discrimination with respect to compensation covers a variety of practices, such as:

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Different rates of pay based on race, sex, religion, or national origin to individuals or groups of employees doing similar work.

Different treatment of employees with respect to merit increases if based on race, sex, religion, or national origin.

Disproportionate differences in pay rates for different jobs based on race, sex, religion, or national origin.

Different treatment of employees with respect to overtime pay opportunities, where based on race, sex, religion, or national origin.

Training and Promotion

Employees of similar capabilities must be offered the same opportunities for training, promotion, transfer, and apprenticeship programs.

Discriminatory Environment

A "racially tense situation" may be a particular source of difficulty when a Black is promoted into a formerly all-white job. Such a situation frequently requires extra support and sympathy from management.

Title VII requires an employer to maintain a working environment free of racial intimidation. That requirement includes positive action when necessary to redress or eliminate employee intimidation.

Age Limit on Promotions

When Blacks have been passed over in the past for promotions, it may be regarded as unlawful to disqualify them from current openings because of age.

Where an employer has not employed Blacks in a given job classification in the past and where that employer now continues to refuse to employ in that position a black employee of long and relevant service based upon an age standard, the Commission will find a violation in the absence of a clear and convincing showing that the age standard is reasonably necessary to the normal and efficient operation of the job in question.

Work Assignments

It is unlawful to give minority group employees a disproportionately large share of the dirtier jobs, less favorable hours, dead-end or low skill jobs, etc.

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Recreational Activities

If an employer contributes financial assistance or other support to employee recreational or social activities, Title VII requires that the activity be open on an integrated basis. This includes company Christmas parties and dances, bowling leagues, baseball teams, bridge clubs, etc.

Manner of Address

A violation may be found if supervisors adopt different approaches in addressing employees based on race, religion, sex, or national origin, such as where white employees generally are called, "Mr. or Mrs." but Blacks are called by their first names or are referred to as "boy" or "girl".

Segregated Facilities

Many problems involve segregated facilities such as drinking fountains, locker rooms, employee entrances, infirmaries, segregated housing, etc. Integration of previously segregated facilities frequently is not enough. The employer also may be required to take steps to encourage Blacks to use the desegregated facilities or to prevent whites from intimidating Blacks in the use of such facilities.

No general answer can be given with regard to permitting employees "freedom of choice" to choose lockers or other facilities. But experience has shown that where compulsory segregation is replaced by "freedom of choice," subtle ways often are used to prevent a choice that would disturb the preexisting segregated pattern. Therefore, an employer who maintained segregated facilities in the past should take positive steps to prevent the pattern or segregation from continuing.

Harassment by Employees

If harassment of a minority group employee by his co-workers or supervisor occurs, management has an obligation to attempt to remedy the situation.

The announcement of a policy against racial discrimination is not sufficient when management has reason to believe that racial discrimination is occurring. Management must take steps to insure that the policy is observed at all levels.

Employer Reprisal

An employer may violate Title VII by taking reprisals against employees who initiate Title VII proceedings against it.

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Discharge for Garnishments

Employers also may violate Title VII by discharging minority group employees for incurring a number of wage garnishments or bad debts.

Grooming Rules

An employer's grooming rules should take into consideration racial differences.

EEOC has held that the application of the "line of sight" hair grooming policy to all employees, without regard to their racially different physiological and cultural characteristics, tends to affect Blacks adversely, because they have a texture of hair different from that of Caucasians. Thus Blacks are measured against a standard that assumes non-Black hair characteristics. Caucasian employees wearing beards and long sideburns are not usually reprimanded and the wearing of an “Afro”" has been appropriated as a cultural symbol by members of the Black race so as to make its suppression an automatic badge of racial prejudice.

Seniority Systems

A seniority system must eliminate the forbidden consequences of the old and admittedly discriminatory seniority system, but, at the same time, care should be taken not to bestow preferential treatment upon one race.

The law should be construed to prohibit the future awarding of vacant jobs on the basis of a seniority system that "locks in" prior racial classification. White incumbent workers should not be bumped out of their present positions by Blacks with greater seniority. Seniority consideration should be asserted only with respect to new job openings.

SEX DISCRIMINATION

It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or seniority lists based on sex, where this would adversely affect any employee, unless sex is a bona fide occupational qualification for that job. Additionally, advertising in "male" and "female" help wanted columns is unlawful, unless sex is a bona fide occupational qualification.

Any laws or policy that limit the employment of females in certain occupations; in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits; during certain hours of the night; for more than a specified number of hours per day or per week; or, for certain periods of time before and after childbirth conflict with and are superseded by Title VII. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

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Rules that limit or restrict the employment of married women and are not applicable to married men constitute discrimination based on sex and is a violation of Title VII.

An employer may not discriminate between men and women with regard to "fringe benefits," including medical, hospital, accident, life insurance and retirement benefits, profit sharing, and bonus plans. Additionally, conditioning the benefits available to employees and their spouses on whether the employee is the "head of the household" or "principal wage earner" will be found a prima facie violation of the prohibitions against sex discrimination, since such status bears no relationship to job performance.

It is unlawful for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for husbands and families of female employees; it also is unlawful to make available benefits for the wives of male employees that are not made available to female employees, or to make available benefits for the husbands of female employees that are not available to male employees.

An employment policy that excludes from employment applicants or employees because of pregnancy (married or unwed) is in prima facie violation of Title VII.

Occupational Qualification

An employer is permitted to label certain occupations as "male" jobs or "female" jobs where sex is a bona fide occupational qualification. But exception to the general ban on sex discrimination should be construed narrowly. It would not include as bona fide occupational qualifications in these situations:

A refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics or women in general. For example, the assumption that women have a higher turnover rate than men.

A refusal to hire based on stereotyped characterizations of the sexes, such as men are less capable of assembling intricate equipment, or women are less capable of aggressive salesmanship.

A refusal to hire because of the preferences of co-workers, the employer, clients, or customers (except where it is necessary for the purpose of authenticity or genuineness, such as the preference for actresses to play female part.)

RELIGIOUS DISCRIMINATION

An employer has the obligation to make "reasonable accommodation" to the religious needs of his employees, where such accommodations do not force undue hardship on the employer.

The employer must prove that such religious accommodations cause undue hardship to his business.

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Because of the "varied religious practices of the American people," the Commission will consider each case of religious discrimination on an individual basis. The 1972 amendments to Title VII added a new section defining "religion" to include all aspects of religious observance, practice, and belief so as to require employers to make reasonable accommodation for employees whose "religion" may include observances, practices, and beliefs such as sabbath observance, that differ from the employer's or the potential employer's requirements regarding standards, schedules, or other business-related conditions.

ADMINISTRATIVE PROCEEDINGS AND ENFORCEMENT

The five-member Equal Employment Opportunity Commission is given the job of administering Title VII of the Civil Rights Act. EEOC initially was given virtually no enforcement powers. Under the 1972 amendments, however, the Commission is authorized to initiate court actions against violators if it is unsuccessful in obtaining voluntary compliance through mediation and conciliation.

Two methods are available for instituting an administrative proceeding before EEOC:

A charge may be filed in writing and under oath by or on behalf of a person claiming to be aggrieved.

A written charge may be filed by a member of the Commission who has reasonable cause to believe that a violation has occurred.

Procedure

A charge must be filed within 180 days after the occurrence of an alleged unlawful employment practice.

After a charge is filed, the Commission must serve a notice **of the charge** on the respondent within 10 days.

The Commission must then investigate the charge after which it must make a determination whether there is reasonable cause to believe that the charge is true. The Commission must make its determination of reasonable cause as promptly as possible and, so far as practicable, within 120 days.

If it finds no reasonable cause, the Commission must dismiss the charge; if it finds reasonable cause, it will attempt to conciliate the case.

If the Commission is unable to secure a conciliation agreement that is acceptable to the Commission, it may bring a civil action, through the U. S. Attorney General, in an appropriate U. S. district court.

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EEOC CONCILIATION

Title VII places great emphasis on conciliation of charges of discrimination. For this purpose, the law allows 30 days for the Equal Employment Opportunity Commission to work out a conciliation agreement between the parties before a suit may be brought. Nothing said or done during the Commission's attempts to achieve voluntary compliance may be made public or may be used as evidence in a subsequent court suit without the written consent of the parties.

Conciliation Process

After the Commission decides that there is cause to believe that discrimination has occurred, the Director of Compliance notifies the charging party and alleged discriminator that a conciliator will contact them to resolve the dispute. The conciliator first meets with the charging party to determine what remedy would be satisfactory to the charging party. The conciliator then tries to persuade the respondent to accept a remedy that is acceptable to the charging party and the Commission. Upon acceptance by the respondent, the remedy is recorded in a conciliation agreement that is signed by the charging party and the respondent, and then submitted to the Commission for its approval.

Conciliation Agreements

Besides remedying the charging party's individual complaint, the Commission normally attempts to include in the conciliation agreement modification of other employment practices to bring them into compliance with Title VII. Successful conciliation agreements often result in changing policies or practices not mentioned in the original complaint, and may affect any persons in addition to the one who filed the complaint.

JUDICIAL PROCEEDINGS

Prior to the 1972 amendments, court enforcement of the no-discrimination requirements of Title VII was left primarily to private actions by the aggrieved individuals. EEOC's role was confined to the informal methods of conference, conciliation, and persuasion.

Under the 1972 amendments, EEOC, if it is unable to secure an acceptable conciliation agreement within 30 days after the filing of the charge, may bring an action against the respondent. In cases against a state or local government, the U.S. Attorney General, rather than EEOC, is authorized to bring the action. The individual also retains the right to bring a court action if he is dissatisfied with EEOC's handling of the case.

Actions by EEOC

TITLE VII OF THE CIVIL RIGHTS ACT

EEOC's initial efforts are directed at conciliating the case. If the Commission is unable to secure a conciliation agreement satisfactory to the Commission within 30 days after the filing of the charge, it may bring a civil action against the respondent.

Actions by Attorney General

In cases against a state or local government, the U.S. Attorney General, rather than EEOC, is authorized to bring the action. In such cases, EEOC notifies the U. S. Attorney General of the failure of conciliation efforts.

Pattern or Practice Cases

A pattern or practice case would be present only when the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature. There would be a “pattern or practice" if, for example, a number of companies or persons in the same industry or line of business discriminate, if a chain of motels or restaurants practiced racial discrimination throughout all or a significant part of its system, or if a company repeatedly and regularly engaged in acts prohibited by the statue.

Under the 1964 Civil Rights Act, the Attorney General was given authority to seek an injunction where he had reasonable cause to believe that individuals were engaged in a "pattern or practice of resistance" to the rights protected by Title VII. The 1972 amendments provide for the transfers of this “pattern or practice" jurisdiction to the EEOC two years after the enactment of the law. In the interim, the Commission and the Attorney General have concurrent jurisdiction in this area.

A three-judge court may be requested upon certification that the case is of general importance. Such a case must be assigned for hearing at the earliest practicable date and must be expedited in every way. Appeals from the judgment of such a court may be made directly to the Supreme Court.

If a three-judge court is not requested, the chief judge of the district immediately must designate a judge in the district to hear and determine the case. If no district judge is available, another district judge or circuit judge can be designated. Such a case shall be heard as soon as possible and be expedited in every way.

Actions by Individuals

Where, in the view of the complaining party, EEOC has not pursued his complaint with satisfactory speed or has entered into an agreement that is unsatisfactory to him, he has an opportunity to seek his own court remedy.

If EEOC dismisses a charge, or, if within 180 days of the charge's filing, EEOC has neither issued a complaint nor entered into a conciliation or settlement agreement that is acceptable to

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EEOC and the complaining party, it notifies him, and he may bring an action in a U. S. district court on his own within the next 90 days.

In such private actions, the courts are authorized at the complainant's request to appoint an attorney and to commence the action without payment of fees. The U. S. Attorney General is authorized to intervene in these private actions if it is certified that the action is of general public importance.

JUDICIAL RELIEF

If a court finds that a respondent is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful employment practice and grant such affirmative relief as it may deem appropriate including, but not limited to, reinstatement with or without back pay. Back pay is limited under the 1972 amendments to no more than that accrued during the two years prior to the filing of a charge.

In addition to injunctions and affirmative relief, the court may award a reasonable attorney's fee as part of the costs.

An attorney's fee awarded to a charging party may be based upon that portion of the case in which he and those in his class prevailed.

RECORDS AND REPORTS

Every employer subject to Title VII is required (1) to make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed and (2) to preserve such records for such periods as the Equal Employment Opportunity Commission prescribes by regulation or order. It also requires employers that control apprenticeship or training programs to maintain detailed records on applicants and how they are selected.

Employer Records - Regulations

Any personnel or employment record made or kept by a political jurisdiction (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the political jurisdiction for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later.

In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 **years from the date of** termination.

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Where a charge of discrimination has been filed, or an action brought by the Attorney General against a political jurisdiction under Title VII, the respondent political jurisdiction shall preserve all personnel records relevant to the charge **or action until final disposition of the** charge or **the action.** The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected.

The above requirements **shall not** apply to application forms and other preemployment records of applicants for positions known to applicants to be of a temporary or seasonal nature.

Title VII gives the Commission access to, and the right to copy, any “evidence” of a person being proceeded against or investigated. The right to copy, however, is limited to evidence that relates to unfair employment practices and that is relevant to a charge under investigation by the Commission.

It is unlawful for EEOC to make public any information obtained from the records that are required to be kept.

Apprenticeship or Training Program Records

Employers that control apprenticeship or training programs are required to maintain a list of applicants who wish to participate in such programs. Persons covered by the law, but not subject to filing Apprenticeship Information Reports, must keep the list for two years. All persons required to file an Apprenticeship Report must keep the list for two years or the period of a successful applicant's apprenticeship, whichever is longer.

The list must be kept in the chronological order in which the applications are received, and must include the address of each applicant, a notation of his or her sex, and identification, as Blacks, "Spanish American," "Oriental," "American Indian," or "Other.” In addition to the chronological list, employers must keep any other records such as test papers completed by the applicants and records of interviews with applicants for a period of two years.

BASIC REPORTING REQUIREMENTS

EEO-4 Employer Report

The Equal Employment Opportunity Commission requires that a "State and Local Government Information Report, Form EEO-4,” shall be filed with the Commission on or before July 30th each year. This information, on employees subject to the Personnel Act, is furnished to the Commission by the Office of State Human Resources, using a computerized system which is updated on the basis of daily personnel transactions processed through the Office of State

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Human Resources. In accordance with EEOC requirements, the EE0-4 report submitted by the State does not include employees subject to the State Human Resources Act in the institutions of higher education, or employees in local government such as Health, Social Services, etc.

Each of the major State departments are furnished a report containing the information included in the EEO-4 report as pertains to their department.

POSTING OF PRESCRIBED NOTICE

The Equal Employment Opportunity Commission is authorized to require the posting of a prescribed notice setting forth excerpts of summaries of pertinent provisions of the Act and information pertinent to the filing of a complaint. The notice is required to be posted by every employer or employment agency.

Such notices must be posted in a conspicuous place where notices to employees and applicants for employment are posted customarily. Willful violation of the posting requirement is punishable by a **fine of not more than** $100 for each separate offense.

Effective March 24, 1972

Transfer Leave (Employee) Policy

Contents:

§ 1. Policy

The State recognizes that relocation of an employee is often necessary to serve the best interests of the employee and of State government. In order to most effectively utilize the capabilities of each employee and to staff all positions with qualified persons, the transfer of employees may be necessary.

When the transfer of an employee is made to a new duty station 35 miles or more away from the current residence, the employee becomes eligible for consideration for reimbursement of moving expenses if the employee chooses to change place of residence. Under such circumstances it is the policy of the State to grant leave with pay to the employee for a reasonable amount of time required to locate a new residence and to accomplish the relocation to that new residence.

§ 2. Covered Employees

Full-time or part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for leave.

Temporary and part-time (less than half-time) are not eligible for leave.

§ 3. Leave to Locate a New Residence

It is desirable that the employee make a decision on permanent living arrangements prior to the time of transfer to the new duty station. Leave with pay may be granted up to a maximum of three trips of three days each to locate a new residence. The agency shall consider the employee's effort being exerted, and progress made, in order to determine if three trips are necessary.

Transfer Leave (Employee) Policy

§ 4. Leave to Move to a New Residence

Leave with pay shall be granted for two days when the employee moves household and personal goods from the old residence to the new one. The agency may grant additional days of leave with pay if the distance between old and new duty stations warrants this, or if other uncontrollable factors require a longer period of time.

Note: Policy on reimbursements for moving expenses is contained in the State Budget Manual. This policy on leave does not always coincide with provisions for paying moving expenses.

§ 5. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1004

§ 6. History of This Policy

Date	Version
May 23, 1975	• Adopted policy for granting leave with pay for employees transferred to another duty station.
June 1, 1985	• The Office of State Budget revised the policy on moving expenses t conform to federal guidelines concerning the distance an employee move before being eligible to claim expenses as an income tax dec The distance was changed from 20 to 35 miles. The policy on leave pay for employees being transferred at the request of the agency is revised to conform with the moving expense policy.
July 1, 1995	• Clarified types of appointments of covered employees.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointment 9/7/17 types and career status.

Unemployment Insurance Policy

Contents:

§ 1. Policy

The Department of Commerce, Division of Employment Security (DES) has sole jurisdiction over decisions concerning unemployment insurance (UI) claims adjudication and benefit rights and has adopted regulations in conjunction with Employment Security Law for claims processing and benefits administration. It is the policy of the State to comply with Employment Security Law and DES regulations in a cooperative and expeditious manner. The purpose of this policy is to assure employees the benefits provided by law while protecting the State from undue benefit charges.

§ 2. Coverage

Effective January 1, 1978, the North Carolina General Assembly provided unemployment insurance coverage for all State employees, including temporary, except those exempted under Section 96-8 (6) I of the Employment Security Law of North Carolina. The coverage applies to employees who work within or both within and without the State and employees working on a State vessel, a State aircraft, or outside the U.S.

Types of work not covered are:

- Elected officials and members of the Legislature,
- Members of the judiciary,
- State and Air National Guard,
- Certain employees serving on a temporary basis during an emergency due to fire, snowstorm, earthquake, flood, or similar emergency,
- Policy-making and advisory positions requiring less than 8 hours per week,
- A student enrolled and regularly attending classes at the institution where employed,
- A spouse of a student enrolled and regularly attending classes if advised at the time service commences that: (a) employment is provided under a program to provide

Unemployment Insurance Policy (cont.)

financial assistance, and (b) such employment will not be covered by unemployment insurance,

- A student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience - the program must have been established for or on behalf of the students rather than for an employer or group of employers and certified that it is an integral part of such a program to the employer,
- An inmate working for a hospital in a State correctional institution,
- A patient working in any State hospital, and
- A minister (chaplain) working for a facility in rehabilitation activities.

§ 3. Administration

The Office of State Human Resources shall design, effect, and maintain a centralized UI Cost Management Program, which shall have as its goal effective claims administration and the control of benefit costs. This goal shall be accomplished by improved communications and agency training on UI issues and procedure, conscientious monitoring and administration of individual claims and benefit charges, examination of payment options, the creation and maintenance of a comprehensive UI database, and related efforts. When it is determined advantageous and cost effective, the Office of State Human Resources may engage the services of a qualified service firm to provide claims administration support.

§ 4. Office of State Human Resources Responsibilities

The Office of State Human Resources shall designate a UI Coordinator, whose responsibility it shall be to coordinate the overall program. The duties of the UI Coordinator shall include:

- Development and distribution of a UI Cost Management Procedures Manual.
- Contract oversight to assure the delivery of services, where a third-party firm is engaged to establish and carry out a centralized claims administration system.
- Action as an intermediary between state agencies and the claims services firm, if such a firm is retained.
- Development and delivery of agency training programs on UI administration
- Service as a technical resource to the agencies on UI matters.

Unemployment Insurance Policy (cont.)

- Assimilation of a comprehensive UI database, which accurately records claims activity and benefit charges to state accounts, and provides the basis for sound reports that can be used to guide management decisions.
- Initiation of studies, recommendations and reports relevant to UI cost management.
- Recommendations concerning the design and cost effectiveness of the centralized UI Program.
- Coordination with the Office of State Budget where there is a need to examine costing methods or financial aspects.
- The monitoring of legislative actions concerning UI laws and benefits and serve as spokesperson before legislative committees when it is within program interests.
- Coordination with DES on relevant questions and issues.

§ 5. Agency Responsibilities

Each agency and institution shall designate an employee, preferably with working knowledge of the unemployment insurance function, to coordinate the flow of necessary information between the agency, the Office of State Human Resources, and any claims administrator retained by the Office of State Human Resources. The specific responsibilities of the Agency UI Coordinator are as follows:

- Participate in the UI training opportunities offered by the Office of State Human Resources or its designated claims administration firm. Develop a working knowledge of the procedures outlined in the Procedures Manual for the centralized cost control program.
- Ensure that agency hiring authorities maintain adequate documentation to provide and support the separation information required by the DES on individual claims.
- Provide detailed and timely wage and separation information, as necessary for the DES to properly adjudicate an individual’s claim for benefits, and to protect the State’s interests against undue benefits.
- Work with the Office of State Human Resources or its designated claims administrator to coordinate attendance of necessary witnesses and to assure the availability of documentation for UI hearings.

Vacation Leave Policy

Contents:

§ 1. Policy

Vacation leave is credited to employees who are in pay status (working, on paid leave or on workers' compensation leave) for one-half or more of the regularly scheduled workdays and holidays in the pay period in accordance with the provisions outlined below.

§ 2. Purpose

The primary purpose of paid vacation is to allow employees to renew their physical and mental capabilities and to remain a fully productive employee. Employees are encouraged to request leave during each year in order to achieve this purpose.

Unlawful Workplace Harassment Policy

Contents:

§ 1. Policy

All employees have the right to work in an environment free from discrimination and harassing conduct. No State employee shall engage in conduct that falls under the definition of unlawful workplace harassment, including sexual harassment discrimination, or retaliation, and no employment decisions shall be made on the basis of race, religion, color, national origin, ethnicity, sex (including pregnancy, gender identity or expression, and sexual orientation),[1] age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability. The State of North Carolina prohibits any such discrimination, retaliation, or harassment, including sexual harassment.

§ 2. Purpose

The purpose of this policy is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment or retaliation based on opposition to unlawful workplace harassment of State employees or applicants and to require that every agency shall develop strategies to ensure that work sites are free from unlawful workplace harassment, including sexual harassment, discrimination, and retaliation.

[1] Bostock v. Clayton County, 590 U.S. 644, 660 (2020) (holding, in majority opinion authored by Justice Gorsuch, that discrimination on the basis of sexual orientation or transgender status is discrimination based on sex).

Unlawful Workplace Harassment Policy (cont.)

§ 3. Objective

In establishing the Unlawful Workplace Harassment Policy, the State Human Resources Commission seeks to achieve the following objectives:

- Provide standards for unlawful workplace harassment across agencies and universities.
- Serve as a resource for employers, employees, and HR practitioners.
- Provide clarity on terms and concepts associated with unlawful workplace harassment.

§ 4. Definitions

Unlawful Workplace Harassment is unsolicited and unwelcomed speech or conduct based of race, religion, color, national origin, ethnicity, sex (including pregnancy, gender identity or expression, and sexual orientation), age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability where:

1. There is an explicit change to the terms or conditions of employment that is linked to harassment based on a protected characteristic, or
2. The conduct constructively changes the terms or conditions of employment because it is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. This is referred to as a hostile work environment.

See the section entitled “Unlawful Workplace Harassment” for more details.

Sexual Harassment is a particular type of violation of this unlawful workplace harassment policy. See the section entitled “Sexual Harassment” for more details.

Retaliation is any adverse action taken against an individual for engaging in a protected activity such as filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older) political affiliation, National Guard or veteran status, genetic information or disability, or because of opposition to employment practices in violation of the unlawful workplace harassment policy.

Unlawful Workplace Harassment Policy (cont.)

§ 5. Coverage

This policy covers full-time or part-time employees with either a permanent, probationary, trainee, time-limited or temporary appointment; former employees; and applicants.

§ 6. Unlawful Workplace Harassment

To be unlawful, the conduct must either alter the terms and conditions of employment or create a work environment that would be intimidating, hostile, or offensive to reasonable people, including an allegation that the harassment was unwelcome.[2] Offensive conduct may include, but is not limited to, offensive jokes, slurs, name calling, physical assaults or threats, and offensive objects or pictures.[3]

Conduct that is not based on a legally protected characteristic is not unlawful harassment.[4] Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment is not unlawful harassment.[5] Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of unlawful workplace harassment.[6]

In limited circumstances (such as intentional sexual touching or a display of a noose), a single incident of harassment can result in a hostile work environment.[7] More frequent but less serious incidents can create a hostile work environment, and most hostile work environment claims involve a series of acts. The focus is on the cumulative effect of these acts, rather than on the individual acts themselves.[8]

Harassment can be based on:

- The perception that an individual has a particular protected characteristic even if the perception is incorrect. (For example, harassment of an employee due to the

[2] U.S. Equal Employment Opportunity Commission (EEOC), Enforcement Guidance on Harassment in the Workplace (April 29, 2024), Section III.A. The EEOC Enforcement Guidance is available at https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace .
[3] EEOC Enforcement Guidance on Harassment in the Workplace, Section III.B.
[4] EEOC Enforcement Guidance on Harassment in the Workplace, Section II.
[5] EEOC Enforcement Guidance on Harassment in the Workplace, Section III.A.
[6] EEOC Enforcement Guidance on Harassment in the Workplace, Section III.A.
[7] EEOC Enforcement Guidance on Harassment in the Workplace, Section III.B.3.b.ii.
[8] EEOC Enforcement Guidance on Harassment in the Workplace, Section III.B.3.c.

Unlawful Workplace Harassment Policy (cont.)

belief they belong to a certain religion even if they do not identify with said religion is unlawful workplace harassment.)

- Association with someone in a different protected class. (For example, it is unlawful workplace harassment based on race if a White employee is harassed because their spouse is Black).
- The complainant's protected characteristic, even if the harasser is a member of the same protected class.
- More than one protected characteristic.[9]

The harasser can be the employee's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee, such as an independent contractor, vendor, or customer, or anyone affected by the offensive conduct.[10]

§ 7. Virtual Work Environment

Conduct within a virtual work environment can contribute to a hostile work environment. It is considered within the work environment if the harassing conduct is conveyed using an employer's email system, videoconferencing technology, intranet, public website, official social media accounts, or other equivalent services or technologies.[11]

§ 8. Sexual Harassment

This policy prohibits employment discrimination, including unlawful workplace harassment based on sex. Harassment based on sex is a particular type of violation of this unlawful workplace harassment policy. Sex-based harassment includes, but is not limited to:

- Harassing conduct of a sexualized nature such as unwanted sexual attention or expression of sexual attraction.
- Harassing conduct of a non-sexualized nature such as sex-based epithets.

[9] EEOC Enforcement Guidance on Harassment in the Workplace, Section II.A.10.
[10] EEOC Enforcement Guidance on Harassment in the Workplace, Section IV.B.
[11] EEOC Enforcement Guidance on Harassment in the Workplace, Section III.C.2.b.

Unlawful Workplace Harassment Policy (cont.)

- Harassing conduct based on pregnancy, childbirth, or related medical conditions. This can include issues such as lactation or the use of contraception.
- Harassing conduct based on sexual orientation or gender identity, including how that identity is expressed.[12]

§ 9. Complaint Process

An employee, former employee or applicant alleging unlawful workplace harassment or retaliation may file a complaint following the process outlined in the Employee Grievance Policy located in the State Human Resources Manual. A complaint of harassment may be made by someone who witnesses harassing conduct, even if the conduct was not directed towards the person filing the complaint.

Employers are required to conduct a prompt, impartial, and thorough EEO Informal Inquiry and take appropriate action based on the findings of the review. The agency shall take immediate and proportionate corrective action if it determines that harassment has occurred.

Employers should also address, through appropriate and proportionate corrective action, complaints of conduct that, as a single action are not severe enough to rise to the level of a hostile work environment, but if allowed to continue would become pervasive and have the potential to create a hostile work environment.

§ 10. Prevention Strategies

Each agency head shall develop strategies to prevent unlawful workplace harassment. The strategies shall at the minimum include:

- A commitment by the agency to the prohibition of unlawful workplace harassment, sexual harassment and retaliation, including clear, documented, and unequivocal statements that harassment and retaliation are prohibited.
- Training and other methods to prevent harassing actions. “Retaliation” is defined earlier in this policy.

[12] EEOC Enforcement Guidance on Harassment in the Workplace, Section II.A.5.

Unlawful Workplace Harassment Policy (cont.)

- A process for disseminating information prohibiting unlawful workplace harassment and retaliation to all agency employees.
- The inclusion of workplace harassment prevention strategies in the agency's Equal Employment Opportunity (EEO) Plan.
- Allocate sufficient resources for effective harassment prevention strategies.
- Regularly train all employees about the unlawful workplace harassment policy.
- Regularly train supervisors and managers about how to prevent, recognize, and respond to objectionable conduct that, if left unchecked, may rise to the level of unlawful workplace harassment.
- Periodically evaluate the effectiveness of the agency's strategies to prevent and address harassment, including reviewing and discussing preventative measures, complaint data, and corrective action with appropriate personnel.

§ 11. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5), (10), (11)
- Title VII of the Civil Rights Act

It is compliant with the Administrative Code rules at:

- 25 NCAC 01J .1101

§ 12. History of This Policy

Date	Version
December 1, 1980	First version. Sexual Harassment Policy adopted.
April 1, 1983	Expands the State's definition of sexual harassment so that the definition can be in conformity with the Federal Guidelines
August 1, 1995	New policy on workplace violence.
December 10, 1998	Policy developed to conform to legislation. Also incorporated Sexual Harassment Policy into the Unlawful Workplace Harassment Policy.
August 19, 1999	Removed the phrase "in any form" from the first sentence of the purpose statement. In the Definition section, (a) redefined the term

Unlawful Workplace Harassment Policy (cont.)

	retaliation to read “adverse treatment” as opposed to “adverse action” and (b) added the word “alleged” to the third advisory note. In the Grievance Procedures and Appeals section, (a) added the following sentence to item number 2, “The employing agency shall provide a written response to the grievant when the agency has determined what action, if any, will result from the grievant’s written complaint”, and (b) in item number 3, changed “within 30 days” to read “within 30 calendar days”. In the Reporting section, added the second and third paragraphs. In the Prevention Plan section (a) added the phrase “or policies and procedures to comply with and implement the law and rules pertaining to unlawful workplace harassment” to the first sentence and the phrase “policies and procedures” to the second sentence, (b) modified item number 4 (b) to read “grievant right to bypass any step in the applicable agency procedure involving review of or decisions by the alleged harasser”, and (c) modified item number 6 to read “Method for implementing appropriate disciplinary actions to address unlawful workplace harassment and to assure that disciplinary actions shall be consistently and fairly applied.”
August 17, 2000	Added Advisory Note stating that conduct towards an outside vendor or contractor that would constitute unlawful workplace harassment toward an employee could constitute unacceptable personal conduct. Added provisions under Grievance and Appeals stating that agency shall take action within 60 days unless the agency has waived the 60- day period and grievant has acknowledged waiver.
June 21, 2001	Advisory Note on Page 1-19 deleted. Current employees and former employees use the same complaint procedures.
July 1, 2006	Advisory Note deleted in Item No. 2 since this provision has been approved permanently.
January 1, 2012	Genetic information was added to the policy where appropriate to conform to the Genetic Information Nondiscrimination Act of 2008 (GINA).

Unlawful Workplace Harassment Policy (cont.)

October 1, 2012	Remove reference to the State Personnel Commission in the Grievance Procedures and Appeals Section. Clarification was added to the policy about filing grievances based on genetic information.
October 1, 2014	• Policy statement amended to add sexual harassment discrimination and Retaliation • Purpose statement was amended to remove the requirement for agencies to develop policies and was replaced with requirements for agencies to develop strategies to ensure worksites are free from unlawful workplace harassment and retaliation. Strategies must be included in EEO Plan. • Definitions were reworded to match definitions provided by U. S. EEOC. • "Hostile work environment" and "Quid Pro Quo" definitions were removed since terms are no longer being used in the policy. • "Applicants" were included in the "coverage" section of the policy. • Grievance Procedures and Appeals section were renamed "complaint process" and refer applicants and employees to the "Employee Grievance Policy". • The "reporting" section was removed from the policy. • The section on "prevention plans" was renamed "prevention strategies."
April 4, 2019	• In alignment with Executive Order #24, the EEO policy was amended to add sexual orientation, gender identity and expression, and Veteran/National Guard status to the list of protected groups. Approved at the SHRC meeting on 4/4/2019. • In addition, definitions removed from the policy. The definitions will be expanded and provided as a supplemental document.
July 11, 2024 (effective August 1, 2024)	• Added citations to the EEOC Enforcement Guidance on Harassment throughout. • Added in Section 3 as objectives: ▪ Provide standards for unlawful workplace harassment across agencies and universities.

Unlawful Workplace Harassment Policy (cont.)

	▪ Serve as a resource for employers, employees, and HR practitioners. ▪ Provide clarity on terms and concepts associated with unlawful workplace harassment. • Revised Section 4, Definitions, by updating the definition of Unlawful Workplace Harassment and moving the text on sexual harassment to a new section of the policy. • Added a new Section 6, Unlawful Workplace Harassment, detailing what conduct is unlawful and what conduct is not unlawful. It also clarifies that harassment may be based on perception, association, committed by a member of the same protected class as the victim and based on more than one protected characteristic. • Added a new section 7, Virtual Work Environment to explain that conduct within a virtual work environment can contribute to a hostile work environment. It is considered within the work environment if the harassing conduct is conveyed using an employer's email system, videoconferencing technology, intranet, public website, official social media accounts, or other equivalent services or technologies. • Added a new Section 8, Sexual Harassment, detailing what is considered sex-based harassment. • Added language to Section 9, Complaint Process, that states: a. A complaint of harassment may be made by someone who witnesses harassing conduct, even if the conduct was not directed towards the person filing the complaint. b. Employers are required to conduct a prompt, impartial, and thorough EEO Informal Inquiry and take appropriate action based on the findings of the review. The agency shall take immediate and

Unlawful Workplace Harassment Policy (cont.)

	proportionate corrective action if it determines that harassment has occurred. c. Employers should also address, through appropriate and proportionate corrective action, complaints of conduct that, as a single action are not severe enough to rise to the level of a hostile work environment, but if allowed to continue would become pervasive and have the potential to create a hostile work environment. • Updated Section 10, Prevention Strategies, to include additional strategies for agencies to follow to prevent unlawful workplace harassment.

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Vacation Leave Policy

Contents:

§ 1. Policy

Vacation leave is credited to employees who are in pay status (working, on paid leave or on workers' compensation leave) for one-half or more of the regularly scheduled workdays and holidays in the pay period in accordance with the provisions outlined below.

§ 2. Purpose

The primary purpose of paid vacation is to allow employees to renew their physical and mental capabilities and to remain a fully productive employee. Employees are encouraged to request leave during each year in order to achieve this purpose.

Vacation Leave Policy (cont.)

§ 3. Covered Employees and Vacation Leave Credits

Full-time permanent, probationary, and time-limited employees are granted leave based on length of total State service as shown in Table I. (Part-time employees who work half-time or more are granted prorated leave.)

Temporary and part-time (less than half-time) are not granted leave.

§ 4. Uses of Leave

Vacation leave may be used for:

- vacation,
- other periods of absence for personal reasons,
- absences due to adverse weather conditions,
- personal illness (in lieu of sick leave),
- illness in the immediate family, and
- time lost for late reporting; however, deductions should be made from the employee's pay where excessive tardiness or absenteeism occurs.
- donations to an employee who is an approved voluntary shared leave recipient.

Options for use of vacation leave under the Workers' Compensation Policy, Family and Medical Leave Policy, and Military Leave Policy are included in these respective policies.

Table I - Leave Credits

Years of Total State Service	Hours Granted Each Month	Hours Granted Each Year	Days Granted Each Year
Less than 5 years	9 hrs. 20 mins.	112	14
5 but less than 10 years	11 hrs. 20 mins	136	17
10 but less than 15 years	13 hrs. 20 mins.	160	20
15 but less than 20 years	15 hrs. 20 mins.	184	23

Vacation Leave Policy (cont.)

20 years or more	17 hrs. 20 mins.	208	26

Total State Service Defined A full month of credit is given for total State service, both subject to and exempt from the Human Resources Act if:

the appointment is:	AND the appointment is:	AND the employee is:
• Full-time, or • Part-time (half-time or more)	• Permanent, • Probationary, or • Time limited	• in pay status for one half or more of the regularly scheduled workdays and holidays in the pay period, or • is on authorized military leave

§ 5. Other Credit for Total State Service

Credit shall also be given for employment with:

- other governmental units that are now State agencies~~,~~
- the county Cooperative Extension Service, Community College System and the public school system of North Carolina, with the provision that a school year is equivalent to one full year,
- a local Mental Health, Public Health, or Social Services if such employment is SHRA.
- a local Emergency Management Agency in North Carolina that receives federal grant-in-aid funds,
- the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees will be counted; and the full legislative terms of the members,

Vacation Leave Policy (cont.)

- authorized military leave from any of the governmental units for which service credit is granted, provided the employee is reinstated within the time limits outlined in the State Military Leave policies,
- authorized workers' compensation leave from any of the governmental units for which service credit is granted

§ 6. Accounting for Creditable Service

The agency shall be responsible for informing each employee of the types of prior service that are eligible to be counted as total State service. If the employee fails to produce evidence of prior service at the time of employment and later produces such evidence, it creates a cumbersome, time-consuming process to adjust leave records. When this occurs, credit will be allowed for the service and the earnings rate will be adjusted; however, retroactive adjustments will only be allowed for the previous twelve months. Exceptions will be made if the agency is at fault or fails to properly detect prior service.

§ 7. Scheduling Leave

Vacation leave shall be taken only upon authorization of the agency head (or designee). Although approval of the use of vacation leave is discretionary, requests by an employee to use vacation leave should be granted if the employee has sufficient accrued vacation leave and the granting of the leave will not result in undue hardship on the agency or its employees.

If an employee has holiday compensatory time, overtime compensatory time, gap hours compensatory time, callback compensatory time, on-call compensatory time, travel compensatory time, emergency closing compensatory time or incentive leave, it shall be taken before vacation leave.

§ 8. Accumulation

Vacation leave may be accumulated without any applicable maximum until December 31 of each year. However, if the employee separates from service, payment for accumulated leave shall not exceed 240 hours.

Vacation Leave Policy (cont.)

On December 31 of each year any employee with more than 240 hours of accumulated leave shall have the excess accumulation converted to sick leave so that only 240 hours are carried forward to January 1 of the next calendar year.

Accumulation for part-time employees shall be prorated.

§ 9. Advancement

An employee may be advanced the amount of vacation leave needed on an individual basis and which can be credited during the remainder of the calendar year.

If more leave is taken than can be credited during the calendar year, the balance above the amount that can be advanced shall be deducted in the next paycheck.

§ 10. Leave Charges

Leave shall be charged in units of time appropriate and consistent with the responsibility of managing absences in keeping with operational needs.

§ 11. Continuation of Benefits

When exhausting leave, the employee continues to accumulate leave~~,~~ is entitled to holidays and is eligible for salary increases during that period.

§ 12. Leave Transferable

When an employee transfers from…	THEN, leave...	OR...
State SHRA to SHRA	shall be transferred	
State SHRA to EHRA	may be transferred subject to the receiving agency's approval.*	employee shall be paid in a lump sum, not to exceed 240 hours (prorated for part-time).
State EHRA to SHRA	may be transferred subject to the receiving agency's approval.	employee shall be paid in accordance with existing leave policies.

Vacation Leave Policy (cont.)

From a State agency to a: • Public school, • Community College • Technical Institute • Local Mental Health, • Local Public Health • Local Social Services, • Local Emergency Management	may be transferred subject to the receiving agency's approval.*	the employee shall be paid in a lump sum not to exceed 240 hrs. (prorated for part-time employees). If only a part of the leave is accepted, the combination cannot exceed 240 hrs.
A local agency listed above to a State agency	may be transferred subject to the receiving agency's approval.	if any portion of leave is paid, the combination cannot exceed 240 hrs.

*Transfer and payment of leave is an agency decision. If the receiving agency accepts all of the leave, the employee does not have an option of transferring some of the leave and receiving a lump sum payment of some of the leave.

§ 13. Separation – Pay for Leave

Lump sum payment for leave is made only at the time of separation.

When separation is due to...	Accumulated Vacation Leave	THEN the employee	and the date separated is:

Vacation Leave Policy (cont.)

• Resignation • Dismissal, • Death	shall be paid in a lump sum not to exceed 240 hours (prorated for part-time employees)	ceases to • accumulate leave • be entitled to take sick leave; • be entitled to holidays. (See (1) exception below.)	the last day of work. (See (2) & (3) exceptions below)
• Service retirement, • Early retirement, or • Reduction in force	may be exhausted if the employee elects to do so.	accrues benefits while exhausting leave.	the last day of leave. **(4) See example below.

(1) When the last day(s) of the month is a holiday and the employee is in pay status through the last available workday, the employee shall also receive pay for the holiday(s).

(2) If an employee is exhausting approved sick/vacation leave for medical reasons and resigns or dies before returning to work, the date separated shall be the date the employee resigns or dies. This is subject to the approval of the Agency HR office.

(3) If an employee gives notice of a resignation and becomes ill, the employee may exhaust sick/vacation leave up until the date of the resignation. The date separated will be the date of resignation. This is subject to the approval of the Agency HR office and requires medical documentation to certify the illness.

(4) An employee retiring or being reduced in force effective January 1st of a given year could establish the last day of work as December 14 (for example); then exhaust 64 hours of leave through the end of December and receive the unused balance, up to 240 hours, in a lump sum. The date separated would be December 31st.

§ 14. Overdrawn Leave

If an employee separates and is overdrawn on leave, it will be necessary to make deductions from the final salary check.

Vacation Leave Policy (cont.)

§ 15. Retirement Contribution

Retirement deductions shall be made from all leave payments.

§ 16. Payment to Estate

In the case of a deceased employee, payment for unpaid salary, leave, and travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made to the Clerk of Superior Court of the county of the deceased employee's residence.

§ 17. Leave Records

It is the responsibility of each agency to maintain vacation leave records for each employee. Leave records shall be balanced at least at the end of each calendar year. Agencies should assume responsibility for notifying employees of leave balances at least once each year.

Agencies must retain leave records for all separated employees for a period of at least five years from the date of separation.

If leave records are kept electronically, the agency does not need to keep paper copies.

§ 18. Bonus Leave

§ 18.1. Amount and Eligibility

The General Assembly has approved the following bonus leave:

Amount of leave	Effective Date	Eligibility
80 hours	September 30, 2002	All employees except: • Employees who do not earn leave, and • Employees paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

Vacation Leave Policy (cont.)

80 hours	July 1, 2003	All employees except: • Employees who do not earn leave, • Employees of the State Highway Patrol who receive an automatic increase, and • Employees paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.
40 hours	September 1, 2005	All employees except: • Employees who do not earn leave, and • Employees paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.
40 hours	September 1, 2014	All employees except: • Employees who do not earn leave

Vacation Leave Policy (cont.)

§ 18.2. Provisions for Part-Time Employment and Leave without Pay

(1) Full-time employees who work less than 12 months shall receive a pro rata amount.

(2) Permanent part-time employees (half-time or more) shall receive a pro rata amount.

(3) Employees on leave without pay, other than workers' compensation leave and leave for reserve active duty, shall be credited with the bonus leave upon their return based on their type of appointment at the time ~~of~~ leave without pay began. If they do not return to work, they are not eligible for the leave.

(4) Employees on workers' compensation leave and leave for reserve active duty shall be credited with bonus leave for use upon their return to work. If the employee does not return, the bonus leave shall be paid in addition to any other leave, in accordance with the leave policies.

§ 18.3. Scheduling Bonus Leave

(1) Bonus leave shall be taken only upon appropriate authorization.

(2) Bonus leave shall be used after holiday compensatory time, over-time compensatory time, gap hours compensatory time, callback compensatory time, on-call compensatory time, travel compensatory time, and emergency closing compensatory time.

(3) Bonus leave may be used for any purpose for which regular vacation leave is used.

(4) Bonus leave shall be charged in units of time consistent with regular vacation leave guidelines.

§ 18.4. Accounting for the Bonus Leave

(1) Bonus leave shall be accounted for separately from regular earned vacation leave.

(2) Any balance of bonus leave on December 31 will be retained by the employee and transferred into the next calendar year. It will not be as part of the maximum 240 hours of vacation that can be retained.

(3) Bonus leave will not be subject to conversion to sick leave.

Vacation Leave Policy (cont.)

§ 18.5. Transferring Bonus Leave

Any balance of bonus leave will be transferred with the employee who transfers to another State agency eligible for bonus leave.

§ 18.6. Separation/Status Change

Bonus leave balance will be paid in addition to regular vacation leave if the employee leaves state government or the appointment type changes to a non-leave earning status (such as exempt, part-time, etc.).

§ 18.7. Miscellaneous Provisions

(1) Bonus leave may be applied to negative balances of regular earned leave with the approval of the employee and the agency head (or designee).

(2) Bonus leave is available to be donated as vacation leave under the Voluntary Shared Leave provisions.

(3) Agencies shall maintain records of bonus leave for each employee.

§ 19. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .0200

§ 20. History of This Policy

Date	Version
January 1, 1949	Annual leave granted at 1 1/4 calendar days per month, cumulative to 30 days.
July 28, 1949	Established a policy stating that unused annual leave accrued be paid estate of the employees. (Rescinded at 10-27-49 meeting)
October 28, 1949	Established policy of granting only annual leave in cases of serious illness of immediate family. Approved payment of accrued annual leave to employees dismissed

Vacation Leave Policy (cont.)

	for misconduct, for failing to report for work and for failure to give any advance notice of separation.
November 1, 1949	Approved policy of limiting petty leave to period of not more than 2 hours in any working day.
April 1, 1950	Employee may accumulate unused annual leave with no maximum, provided that no more than 30 days leave may be taken and/or paid for in any one calendar year. Adopted policy stating that full-time permanent employees must be in full pay status during the entire month in order to earn either sick or annual leave.
June 16, 1950	Revised policy so that full-time permanent employees who are in pay status during one-half or more of the scheduled working days in a month shall earn full sick and annual leave credits for the month.
August 10, 1951	Unused annual leave accrued to employee to be paid to the estate of the employee upon death of the employee.
November 29, 1951	Annual leave to be calculated based on three times the number of days an employee is scheduled to work each week. In case of death, employee's estate shall be paid for accumulated and currently earned annual leave not to exceed the maximum of 45 days.
December 1, 1951	Annual leave can be accumulated to a maximum of 45 days, but cannot take more than 30 in any calendar year. Employee resigns, is dismissed, dies, or goes on military leave without pay, the employee or estate shall be paid for all accumulated and currently earned annual leave up to a maximum of 45 days.
March 13, 1952	Rescinded previous policy whereby an employee could accrue annual leave during period of terminal leave.
September 18, 1953	New policy on maternity leave required annual leave to be paid in a lump sum before employee goes on leave without pay.

Vacation Leave Policy (cont.)

October 1, 1953	Adopted policy for terminal leave which states that employees cease to earn leave, be entitled to holidays and cease to be eligible for salary increments or promotional increases.
January 1, 1954	Reduced maximum accumulation of annual leave from 45 to 30 days. When annual leave accumulated to maximum of 30 days, additional leave cannot be earned or have additional leave advanced until some of the 30 days have been taken.
January 1, 1955	Employee granted leave-without-pay may not take or be paid for more than 30 days annual leave in any calendar year. Any amount in excess of 30 days to the employee's credit would not be available to the employee if and when he returned to State employment.
January 28, 1955	Leave charges covering absences during unusual situation (weather).
May 1, 1959	Employee shall be paid for or allowed to exhaust only that accumulated annual leave which is payable in the calendar year in which they separate from service.
April 15, 1960	Employees cannot take or be paid for more than 30 days annual leave in any consecutive twelve months period.
December 1, 1960	An employee may take earned and unused leave regardless of the amount taken previously during the calendar year. An employee, upon separation, shall be paid for all earned and unused annual leave regardless of the amount already taken but for not more than 30 days.
December 15, 1969	When going on leave without pay for educational purposes, annual leave may be exhausted, paid in a lump sum or retained for future use.
January 1, 1970	Extended to part-time employees in permanent positions eligibility for sick and annual leave, holidays, and salary increments which apply to full-time permanent employees – earned on a pro-rata basis.
July 1, 1970	An employee may exhaust annual leave rather than be paid in a lump sum when retiring due to disability.

Vacation Leave Policy (cont.)

April 1, 1971	Unused annual leave shall be transferred when an employee transfers between State agencies. Annual leave may be transferred to local county mental health, public health, social services or civil defense agency, if county willing to accept. Otherwise pay in a lump sum. When to State, annual leave (not to exceed 30 days) or any portion of unused leave may be transferred to the State. If person request and is paid for annual leave at the time of transfer to or from – will not preclude consideration for transferring sick leave.
October 1, 1971	Revised to allow annual leave for absences as a result of adverse weather conditions.
June 20, 1972	Revised – annual leave to be exhausted rather than paid in a lump sum before an employee goes on leave without pay for maternity purposes. If annual leave overlaps with temporary disability in which sick leave is used, exhaust annual leave before and after.
July 1, 1973	Adopted graduated annual leave plan. Also allowed annual leave to be taken in one-hour units. Used same definition for aggregate service as in the longevity policy. Less than 2 yrs - 80 hours per year 2 but less than 5 - 96 hours 5 but less than 10 - 120 hours 10 but less than 15 - 144 hours 15 but less than 20 - 168hours 20 or more - 192 hours
August 3, 1973	Aggregate service to include permanent part-time employment.
December 13, 1974	Aggregate service amended to include County Agricultural Extension Service.
March 1, 1975	Revised payment of annual leave - annual leave to be paid or that annual and sick leave be exhausted through the last full hour of

Vacation Leave Policy (cont.)

	unused leave. Overdrawn leave would be deducted in full hour units, i.e., a full hour for any part of an hour overdrawn.
January 1, 1976	Revised leave charges to provide that petty leave may be taken in units of 5 minutes and that it may be used in combination with sick or annual leave.
January 1, 1978	Maximum annual leave accumulation - annual leave may be accumulated without any applicable maximum until December 31 of each calendar year. On December 31 any accumulated over 240 hours shall be canceled.
March 1, 1978	Added provision for choosing options during leave without pay. Annual leave may be used to account for the hours that no work is performed when the time is changed from Eastern Standard Time to Day Light Savings Time.
October 1, 1982	Aggregate service amended to include former employment in the General Assembly.
December 1, 1982	Aggregate service credit - clarified that permanent part-time employees are credited with aggregate service on a pro rata basis.
January 1, 1983	1. Changed name from ANNUAL leave to VACATION leave. 2. New purpose statement to reinforce the primary philosophy of vacation and to reflect the secondary purpose; paid leave for personal time away from work 3. Expand uses to allow employee a choice of using this leave or sick leave for illness of family. 4. Present PETTY LEAVE combined with Annual Leave into Vacation Leave. The 14 hours petty leave added to annual leave provides from 11 ¾ days to 25 ¾ days. 5. Formerly, minimum annual leave charge was one hour. With the combination of petty leave, the minimum is left to discretion of each agency.

Vacation Leave Policy (cont.)

July 1, 1983	Revised the definition for granting vacation leave. Part-time (half time or more) would be counted as full service for purposes of earning leave. Amount earned would be based on total state service - amount would be pro-rated but the service would not be prorated.
December 1, 1983	Allows for transfer of vacation leave to and from the public school system and community college and technical institutes.
April 1, 1984	Clarified revision in the transfer of vacation leave between public schools and community colleges. Provided that if the employing agency will accept the leave, an employee may transfer all accumulated leave. However, in cases where an employing agency will not accept the total amount, the portion paid for in combination with the amount transferred may not exceed 240 hours.
August 1, 1986	Added paragraph about accounting for creditable service.
July 1, 1987	Added legislative terms of members to creditable service.
January 1, 1989	Pay status change to half the workdays and holidays.
December 1, 1993	Revised to conform to the revision to G.S. 126-8 which states that on December 31 of each year, any employee who has vacation leave in excess of the allowed accumulation shall have that leave converted to sick leave. Included time-limited appointment for eligibility to earn leave.
July 1, 1995	Changed the deduction for overdrawn leave from a full hour unit to the unit nearest to a tenth of an hour. Changed the method of paying terminal leave from a full hour unit to the nearest tenth of an hour. Changed the retention of leave records from four to five years. Effective date changed to July by Rules Review Commission.
January 1, 2002	Revised to include an omission: Add Workers' Comp Leave under creditable total state service.
September 30, 2002	Revised to include Bonus Leave Guidelines.

Vacation Leave Policy (cont.)

February 21, 2003	Deleted provision that provided that vacation leave, except for immediate family, could only be shared within the parent agency.
July 1, 2003	Revised to incorporate 2003 bonus leave.
May 1, 2004	1) Clarify policy on transfer of leave from SPA to EPA and vice versa. 2) Add Advisory Note regarding the use of vacation leave for ethnic/cultural events. 3) Add paragraph to Bonus Leave to clarify that employees on workers' compensation leave and leave for reserve active duty shall be paid for the bonus leave if they do not return.
September 1, 2005	Revised to include bonus leave provisions eff 9-1-05. Corrected Bonus Leave Chart to indicate the employees who were not eligible for the 2002 bonus.
January 1, 2007	(1) Added Advisory Note under "Advancement" to clarify that if more leave is taken than can be credited during the calendar year, the balance above the amount that can be advanced shall be deducted in the next paycheck. (2) Changed Leave Records Section to clarify that leave records shall be balanced at least at the end of each calendar year. (3) Added note to clarify that if leave records are kept electronically, the agency does not have to keep a paper copy.
October 1, 2007	1) Under the paragraph Scheduling Leave, added an Advisory Note stating that for agencies using BEACON HR/Payroll System: • If an employee has holiday compensatory time, overtime compensatory time or on-call compensatory time it shall be taken before vacation leave. • Hours worked in excess of the employee's established work schedule will be used to offset leave reported in the same workweek. Leave will be restored to the employee's balance for later use.

Vacation Leave Policy (cont.)

	2) Under the paragraphs Leave Charges, Overdrawn Leave and Pay rolling Leave, deleted the sentence that stated that leave to be paid as terminal leave or to be exhausted shall be in units of one-tenth of an hour. 3) Under the paragraph Scheduling Bonus Leave, added Advisory Note stating that in the BEACON HR/Payroll System, bonus leave shall be used after holiday compensatory time, over-time compensatory time, on-call compensatory time and vacation leave. 5) Deleted Item No. 4 giving the employee the option to use vacation leave or bonus leave.
June 1, 2008	Changed policy to allow an employee who is reduced in force to exhaust vacation leave after their last day of work and still be paid for up to 240 hours of leave in a lump sum.
October 1, 2008	Under Separation – Pay for Leave – clarified exceptions/procedures when employee is exhausting sick leave.
July 1, 2009	Revises Advisory Note to add gap hours compensatory time and travel compensatory time to leave hierarchy used in the BEACON HR/Payroll System.
January 1, 2011	(1) Combines the 0-2 years with 2 but less than 5 years to create a less than 5 years category. (2)Increases the annual accrual rate by 2 hours per year for each of the years of total state service category. (3)Advisory Note about Leave Offsetting deleted and placed in General Leave Policies.
September 1, 2014	SB744 (S.L. 2014-100) the Appropriations Act of 2014 awarded bonus leave to employees who were eligible to earn vacation leave as of September 11, 2014. Also removed the requirement for vacation leave to be used prior to bonus leave. The following additional changes were made to the policy:

Vacation Leave Policy (cont.)

	• In “scheduling leave” section, removed the reference to BEACON agencies when requiring employees to use compensatory time earned prior to using vacation leave. This now applies to all agencies and universities. • Added a note in the “leave transferring” section that the employee does not have the option of transferring some of the leave and receiving a lump sum payment of a portion of the leave if the receiving agency will accept all of the leave. • Added a note in the “separation-pay for leave” section clarifying that medical certification should be required if an employee gives notice of resignation and then becomes ill and cannot work during the notice period. • Deleted the “Options during LWOP” section since this is a duplication of the LWOP policy. • Deleted the “Payrolling Leave” section.
September 7, 2017	Policy revised to delete all reference to trainee appointments, per appointment types and career status.

Veteran's & National Guard Preference Policy

Contents:

§ 1. Statutory Authority

The North Carolina Human Resources Act requires the State Human Resources Commission provide employment preference for state positions subject to G.S. 126 to veterans who served in the Armed Forces of the United States as defined in G.S. 126-81(1-3) and to eligible members of the National Guard as defined in G.S. 126-81(4).[1]

The preference to be accorded eligible veterans and National Guard members shall apply in initial employment, subsequent employment, promotions, reassignments, horizontal transfers, and reduction-in-force situations.

§ 2. Who is eligible?

1. "Veteran" means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and was discharged under other than dishonorable conditions.

   "Eligible veteran" means:

   a) a veteran who served during a period of war;
   b) the spouse of a disabled veteran;
   c) the surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly because of such service;

[1] This policy applies only to positions subject to the State Human Resources Act. However, note that similar preferences are provided under G.S. 126-83 and 128-15 for certain positions exempt from the State Human Resources Act.

Veteran's & National Guard Preference Policy (cont.)

d) a veteran who suffered a connected disability during peacetime;
e) the spouse of a veteran described in sub-division d. of this subsection;
f) the surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who died for service-related reasons during peacetime.

2. Eligible member of the National Guard means:
   a) A resident of North Carolina who is a current member in good standing of either the North Carolina Army National Guard or the North Carolina Air National Guard;
   b) A resident of North Carolina who is a former member of either the North Carolina Army National Guard or the North Carolina Air National Guard, who discharge is under honorable conditions with a minimum of six years of creditable service;
   c) the surviving spouse and dependent of a member of the North Carolina Army National Guard or the North Carolina Air National Guard who dies on State active duty either directly or indirectly as a result of that service;
   d) the surviving spouse or dependent of a member of the North Carolina National Guard who died for service-related reasons during peacetime.

§ 3. What periods of war are included for Veterans Preference?

• December 7, 1941	through	May 15, 1975
• June 6, 1983	through	December 1, 1987
• December 20, 1989	through	January 31, 1990
• August 2, 1990	through	The date approved by Congress or the President as the ending date for hostilities for the War on Terrorism; or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

Veteran's & National Guard Preference Policy (cont.)

§ 4. How to Claim Veteran's Preference or National Guard Preference

To claim veteran's preference, all eligible persons shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, along with a State Application for Employment (in the Applicant Tracking System or by paper Form PD-107-2022) to the appointing authority. The agency shall verify eligibility.

To claim National Guard preference, current members of the National Guard who are in good standing of either the NC Army National Guard or NC Air National Guard shall submit a copy of the NGB 23A (RPAS), along with a State Application for Employment (in the Applicant Tracking System or by paper form, PD 107-2022). Former members of either the NC Army National Guard or the NC Air National Guard, with honorable discharge and six years of creditable service shall submit a copy of the DD 256 or NGB 22, along with a State Application for Employment (in the Applicant Tracking System or paper form, PD 107-2022). The agency shall verify eligibility.

§ 5. Minimum Qualifications

To claim veteran's preference or National Guard preference, eligible veterans or National Guard members must meet the minimum training, education and experience requirements for the position for which applied and must be capable of performing the duties assigned to the position.

In evaluating qualifications, credit shall be given on a year for year, and month for month basis, for all military service training or schooling and experience which bears a reasonable functional relationship to the knowledge, skills, and abilities required for the position.

In determining minimum education and experience, related civilian experience should be evaluated prior to evaluating related military experience to give the veteran or National Guard member maximum credit for unrelated military service.

Veteran's & National Guard Preference Policy (cont.)

§ 6. Determining and Applying Credit

Veteran's preference or National Guard preference shall be accorded eligible veterans and National Guard members by giving credit as follows:

(1) Credit for numerically scored examinations:

In initial employment, subsequent employment, promotion, reassignment, and horizontal transfer procedures, where numerically scored examinations are usedin determining the relative ranking of candidates, ten (10) preference points shallbe awarded to eligible veterans.[2]

(2) Credit for unrelated military service:

In initial employment, subsequent employment, promotion, reassignment and horizontal transfer procedures where structured interview, assessment center, in-basket, or any other procedure, not numerically scored, is used to qualitatively assess the relative ranking of candidates, the eligible veteran or National Guard member who has met the minimum qualification requirements and who has less than four years of related military experience beyond that necessary to minimally qualify, shall also receive additional experience credit for up to four years of unrelated military service. (Exception: Eligible spouses and dependents shall not receive additional experience credit for the veteran's unrelated military service.)

To determine the amount of additional experience credit to be granted for unrelated military service, first determine the amount of related military service possessed by the eligible veteran or National Guard member beyond that required to meet the minimum qualifications and:

- if the total of such experience equals or exceeds four years, the additionalcredit for

[2] If an agency uses numerically scored tests or exams during the selection process to rank applicants to determine who is referred or interviewed, 10 additional points shall be added to the final score of the numerically scored test or exam for eligible veterans and National Guard members. The 10 preference points are applied only to the part of the scoring that is from "numerically scored examinations." For example, if there were a three-part process where 25% of an applicant's score was based on a numerically scored examination, 25% of an applicant's score was based on review of sample work performed in an in-basket exercise, and 50% of the applicant's score was based on a structured interview, the 10 preference points apply only to the portion of the applicant's score that was based on a numerically scored examination, not to the final ranking of the candidates.

unrelated military service does not apply, but

- if the total of such experience is less than four years, the veteran or National Guard member shall receive direct experience credit for unrelated military service in an amount not to exceed the difference between the related military service and the 4 year maximum credit that may be granted.

§ 6.1. Applying the credit throughout the selection process

After determining the appropriate amount of preference points and/or military service credit to be awarded to the veteran or National Guard member, when assessing the applicants, the veteran or National Guard member should be assessed relative to other applicants but always using their score, ranking, or total experience that includes that military service credit.

§ 6.2. Examples

Example A: An eligible veteran or National Guard member has 2 years of related military experience beyond the minimum. The veteran or National Guard member also has 6 years of unrelated military service. Since the related military service beyond the minimum is less than 4 years, the eligible veteran or National Guard member receives 2 years credit for unrelated military service. [4 yrs. (maximum possible unrelated service credit) less 2 yrs. (related military service held by the applicant beyond that necessary for minimum qualification) = 2 yrs. (amount of the six years of unrelated service which can be credited)].

Example B: An eligible veteran or National Guard member has only enough related military service to qualify for the minimum, but has 2 years, 3 months of unrelated military service. This person will receive 2-years, 3 months experience credit. [4 yrs. (maximum possible unrelated service credit) less 0 (related military service beyond that necessary for minimum qualification) = 4 yrs. (4 yrs. could be credited for unrelated military service,however, the person in this instance can only claim 2 yrs., 3 mos., the actual amount of unrelated military service)].

Veteran's & National Guard Preference Policy (cont.)

§ 6.3. **Reduction in Force**

In reduction-in-force situations, when calculating length of service, the eligible veteran or National Guard member shall be accorded one year of state service for each year or fraction thereof of military service, up to a maximum of five (5) years credit. (This additional credit is not counted as total state service.)

§ 7. Applying the Preference During Final Selection for Eligible Veterans or National Guard Members from Outside the State Government Structure

This preference is not for current State employees who are seeking promotion, reassignment, or horizontal transfer. For initial employment or subsequent employment, after applying the military service credit to eligible veterans or National Guard members, the eligible veteran or National Guard member shall be hired when overall qualifications are substantially equal to the non-veterans or non-National Guard members in the most qualified applicant pool unless there are State employees with a priority as described under "Relationship to Other Priorities" below. Substantially equal qualifications occur when the employing agency cannot make a reasonable determination that the qualifications held by one or more applicants are significantly better suited for the position than the qualifications held by another applicant. Veterans'/National Guard preference, at the final selection stage, applies only to candidates from outside the State government structure with substantially equal qualifications who are among the most qualified candidates under G.S. 126-14.2(2).

For promotion, reassignment, and horizontal transfer, after applying the credit in Section 6 of this policy to veterans or National Guard members eligible veteran or National Guard member who is a current State employee receives no further preferences and competes with all other applicants who have substantially equal qualifications.

§ 8. Relationship to Other Priorities

If the selection decision is between a qualified non-State employee veteran or National Guard member and a substantially equivalent applicant with a priority described below, the applicant with the priority described below shall be selected:

Veteran's & National Guard Preference Policy (cont.)

- a qualified current State employee with career status who is seeking a promotional opportunity,
- a qualified employee separated from an exempt policy-making or exempt managerial position for reasons other than just cause,
- a qualified State employee with career status who is notified of or separated by reduction in force, or
- an employee returning from workers' compensation leave.

§ 9. Appeals

Any claim or allegation that preference has not been accorded to an eligible veteran or National Guard member shall follow the agency grievance procedure.

§ 10. Sources of Authority

This policy is issued under any and all of the following sources of authority:

- N.C.G.S. § 126-4(4) which authorizes the State Human Resources Commission to establish "[r]ecruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions."
- N.C.G.S. § 126-80 to 83
- N.C.G.S. § 128-15
- 25 NCAC 01H .1100

§ 11. History of This Policy

Date	Version
March 1, 2007	First version/Clarified that eligible spouses and dependents shall not receive additional experience credit for the veteran's unrelated military service. The preference to be given is that the qualified spouse or dependent shall be hired when the spouse or dependent's overall qualifications are substantially equal to the non veterans in the applicant pool. Such preference may be claimed without regard

Veteran's & National Guard Preference Policy (cont.)

	to whether such preference has been claimed previously by the veteran.
July 27, 2007	House Bill 1412 was enacted by the 2007 General Assembly to enhance the preference accorded veterans. The current rule grants such preference in initial employment. The legislations extends this preference to other employment events including subsequent employment, promotions, reassignments, and horizontal transfers
August 1, 2009	In the first paragraph, replaces commas with parentheses around "for reasons other than training" in order to clarify the situations for which preference is granted.
December 1, 2013	HB834 was ratified to change the appeal rights of State employees; therefore, the appeals section is being changed to reflect that claims of the denial of veterans' preference must go through the agency grievance procedures.
October 1, 2020	Policy reviewed by the Recruitment Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. No substantive changes. Reported to SHRC on October 1, 2020. General editorial changes to text, grammar, and language. All changes were minor wording and format changes for clarification.
March 3, 2022	Align current Veterans Preference Policy with statutory changes made during 2021 adding the National Guard.
February 15, 2024	Revised policy to provide clarity and consistency with the North Carolina Administrative Code including: • Adding a footnote to explain how the credit for numerically scored interviews should be applied. • Reformatting Section 6 to include multiple sub-sections, o Creating a Section 6.1 that explains how the interview or service credit should be applied through the hiring process; and

Veteran's & National Guard Preference Policy (cont.)

	○ Moving the Examples to Section 6.2 and removed the gray box; and ○ Creating a Section 6.3 with a sub-heading for Reduction in Force. • Revising the title of Section 7 from "Applying the Preference" to "Applying the Preference During Final Selection for Eligible Veterans or National Guard Members from Outside the State Government Structure" and adding language to Section 7 that clarified the final selection priority only applies to applicants outside the state government structure and that it does not apply to current state employees seeking a promotion, transfer or reassignment. Employees seeking a promotion, transfer or reassignment receive no further preference after application of that detailed in Section 6 of the policy. Added as Sources of Authority section and added N.C.G.S. § 126-80 to 83 as a source of authority.

Voluntary Shared Leave Policy

Contents:

§ 1. Policy

An employee may donate leave, as outlined below, to an employee who has been approved to receive voluntary shared leave because of a medical condition of the employee or of a member of the employee's immediate family that will require the employee's absence for a prolonged period of time. **[Please refer to the chart below for the definition of immediate family.]**

§ 2. Covered Employees

Full-time or part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for leave.

Temporary and part-time (less than half-time) are not eligible for leave.

Voluntary Shared Leave Policy (cont.)

§ 3. Definitions

Following are definitions of terms used in this policy:

Prolonged medical condition or prolonged period of time: 20 consecutive workdays (see exception on next page).

Recipient: The employee or the employee's immediate family who receives leave.

Donor: Employee who donates leave.

Immediate family: See chart below.

Definition of Immediate Family

Spouse	Parent (Mother/Father)	Child (Daughter/Son)	Brother/Sister	Grand/Great	Dependents
Husband Wife	Biological Adoptive Step In Loco Parentis In-law	Biological Adoptive Foster Step In Loco Parentis In-law	Biological Adoptive Step Half In-law	Parent Child Step In-law	Living in the employee's household

§ 4. Exception to 20-Day Period

If an employee has had previous random absences for the same condition that has caused excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last twelve months, the agency may make an exception to the 20-day period.

§ 5. Agency Policies

All agencies shall develop policies and procedures to implement this program, subject to the availability of funds. This may include a specific time period during which leave may be donated. If an agency policy includes employees exempt from the State Human Resources Act who are in comparable leave earning and reporting positions, leave may be shared between subject and exempt employees.

Voluntary Shared Leave Policy (cont.)

§ 6. Leave Bank Prohibited

Establishment of a leave "bank" for use by unnamed employees is expressly prohibited. Leave must be donated on a one-to-one personal basis.

§ 7. Intimidation or Coercion Prohibited

An employee may not intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using leave under this program. Such action shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct.

§ 8. Qualifying to Receive Leave

In order to receive voluntary shared leave, an employee (see definition of "Recipient") must have complied with existing leave rules and:

- have a prolonged medical condition (or a member of the employee's immediate family has a medical condition that requires the employee's absence for a prolonged period of time),
- apply for or be nominated to become a recipient,
- produce medical evidence to support the need for leave beyond the available accumulated leave, and
- be approved by the parent agency to participate in the program.

An employee on workers' compensation leave who is drawing temporary total disability compensation may be eligible to participate, but would be limited to use with the supplemental leave schedule issued by the Office of State Human Resources.

An employee on maternity leave may be eligible to receive voluntary shared leave to cover the period of disability related to the pregnancy and/or birth as documented by a physician.

§ 9. Non-qualifying Reasons

An employee who is receiving benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the program. Shared leave may be used

Voluntary Shared Leave Policy (cont.)

during the required waiting period and following the waiting period provided DIPNC benefits have not begun.

The policy will not ordinarily apply to short-term or sporadic conditions or illnesses. This would include such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term, recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to policy intent and must be handled consistently and equitably.

Voluntary shared leave cannot be used for parental care of a newborn child absent a documented prolonged health condition.

§ 10. Application Procedure

A prospective recipient shall apply or be nominated by a fellow employee to participate in the program. Application shall follow the procedure established by the parent agency and shall include a doctor's statement.

§ 11. Agency Approval

The parent agency shall review the merits of the request and approve or disapprove. Agency heads may choose to delegate the responsibility for reviewing the validity of requests to an existing peer group or establish a committee for this purpose. Such a committee may also be used in an advisory capacity to the agency head.

§ 12. Confidentiality

The Privacy Act makes medical information confidential. When disclosing information on an approved recipient, only a statement that the recipient has a prolonged medical condition (or the family member) needs to be made. If the employee wishes to make the medical status public, the employee must sign a release to allow the status to be known.

§ 13. When does voluntary shared leave begin?

An employee may begin using voluntary shared leave after all available sick and vacation/bonus leave has been exhausted. While using voluntary shared leave, employee

Voluntary Shared Leave Policy (cont.)

continues to earn leave; when accounting for leave, this vacation and sick leave should be used first.

§ 14. How much leave can a recipient receive?

The amount of leave a recipient may receive is 1,040 hours (prorated for part-time employees), either continuously or, if for the same condition, on a recurring basis. However, management may grant continuation, on a month-to-month basis, to a maximum of 2,080 hours, if management would have otherwise granted leave without pay.

§ 15. Qualifying to Donate Leave

In order to donate voluntary shared leave, an employee (see definition of "Donor") must, at the time of donation:

- be an active employee (not separated);
- be in a position that earns leave; and
- have sufficient leave balances (see "how much leave may be donated).

Employees on workers' compensation leave without pay (LWOP) can donate leave earned prior to going on LWOP. The employee must have been in active leave earning status prior to workers' comp LWOP and otherwise qualify to donate leave. Leave earned while on workers' compensation LWOP is not available for donation until the employee is reinstated from LWOP.

State employees who are exempt from the Human Resources Act (EHRA) can only participate if they are in comparable leave earning and reporting positions. Paid Time Off (PTO) leave programs are not considered comparable.

§ 16. What may a family member donate?

An employee of any agency, public school system, or community college may contribute vacation/bonus or sick leave to another immediate family member in any agency, public school or community college. This includes family members on leave without pay. See definition of immediate family.

Voluntary Shared Leave Policy (cont.)

§ 17. What may a non-family member donate?

An employee may donate the following leave to a non-family member:

(1) An employee may donate vacation or bonus leave to another employee in any State agency.

(2) An employee may donate vacation/bonus leave to a coworker's immediate family who is an employee in a public school or a community college. The employee and coworker must be in the same agency. This includes non-family members on leave without pay.

(3) An employee of a State agency may donate sick leave to a nonfamily member of a State agency under the following provisions effective January 1, 2011:

- The donor shall not donate more than five days of sick leave per year to any one nonfamily member;
- The combined total of sick leave donated to a recipient from a nonfamily member donors shall not exceed 20 days per year;
- Donated sick leave shall not be used for retirement purposes, and
- Employees who donate sick leave shall be notified in writing of the State retirement credit consequences of donating sick leave.

Advisory Note: At retirement a member of the TSERS with an earned sick leave balance receives an additional month of service credit for each 20 days or portion thereof. The additional service credit increases the retirement benefit for the remainder of the life of the retiree.

§ 18. How much vacation/bonus leave may be donated?

The minimum amount of vacation and/or bonus leave that may be donated is four hours.

The maximum amount of vacation leave that may be donated:

- may not be more than the amount of the donor's annual accrual rate, and
- may not reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate.

Bonus Leave may be donated without regard to the above limitations on vacation.

Voluntary Shared Leave Policy (cont.)

Example: Employee with 5 but less than 10 years of total state service earns 136 annually. Employee may donate 4 or more hours but may not reduce vacation leave balance below 68 hours.

§ 19. How much sick leave may be donated?

The minimum amount of sick leave that may be donated is four hours.

The maximum amount of sick leave that may be donated:

- is 1,040 hours, but,
- may not reduce the sick leave account below 40 hours.

§ 20. What happens to leave at the end of the medical condition?

Any unused leave at the expiration of the medical condition, as determined by the agency shall be treated as follows:

- The recipient's sick leave account balance shall not exceed a total of 40 hours (prorated for part-time employees).
- Any additional unused donated leave shall be returned to active (working or on leave without pay) donor(s) on a prorata basis and credited to the leave account from which it was donated.

§ 21. What happens to leave if recipient separates?

If a recipient separates due to resignation, death, or retirement from State government, participation in the program ends.

Unused leave shall be returned to the donor(s) on a prorata basis and credited to the same account from which it originally came.

§ 22. What happens to leave if recipient transfers?

If a recipient transfers to another State agency, unused voluntary shared leave shall be returned to the donors. The employee must make a new request in the receiving agency.

§ 23. Leave Records and Accounting

The agency shall establish a system of leave accountability which provides a clear and accurate record for financial and management audit purposes.

Voluntary Shared Leave Policy (cont.)

Leave donated shall be:

- kept confidential. (Only individual employees may reveal their donation or receipt of leave.)
  - credited to the recipient's sick leave account and charged according to the Sick Leave Policy.
  - available for use on a current basis or may be retroactive for up to 60 calendar days to substitute for advanced vacation or sick leave already granted to the recipient or leave without pay. Donated leave should be applied to advanced leave before applying it to leave without pay.

§ 24. Reporting

All State agencies shall annually report to the Office of State Human Resources on the voluntary shared leave program. For the prior fiscal year, the report shall include the total number of days or hours of vacation leave and sick leave donated and used by voluntary shared leave recipients and the total cost of the vacation leave and sick leave donated and used.

§ 25. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5); (10)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01E .1300

§ 26. History of This Policy

Date	Version
June 9, 1999	• Revised policy statement to provide that all members of the employee's immediate family (as defined in the policy) are eligible to receive and donate leave. Included provisions to allow public school employees to participate in the voluntary shared leave program in accordance with SB 765. Deleted the provisions that required "excess" leave which is unused to be returned and

Voluntary Shared Leave Policy (cont.)

	converted to sick leave. It may be returned to the same account from which it was donated
Revision 6 September 5, 2000	• Definition of Immediate Family corrected to omit “In-law” under the definition of Child.
Revision 8 November 1, 2000	• Clarifies that daughter-in-law and son-in law are part of the immediate family definition.
Revision 11 June 1, 2002	• Revises provision to allow employees to donate vacation leave to • employees in any State agency. (Exception Case No. 02-04)
Revision 13 September 30, 2002	• Added provision for bonus leave.
April 10, 2003	• Revised to incorporate provisions of HB 432 that includes community colleges in the voluntary shared leave program. (Rule approved effective January 1, 2004.)
July 1, 2003	• Revised to incorporate provision for sharing leave with coworker’s immediate family.
October 1, 2007	• Clarified that employees on LWOP may donate leave. • Added requirement that unused leave will only be returned to active donors. • Deleted sentence that stated that fractions of an hour cannot be returned. • Added statement that donated leave shall be applied to advanced leave before applying it to leave without pay.
January 1, 2011	• House Bill 213 added a provision to G. S. 126-8.3 to allow an employee at a State agency to donate sick leave to a nonfamily member employee of another State agency. The maximum that can be donated is five days per year and the combined total donated to a recipient cannot exceed 20 days.
February 1, 2011	• Corrects the example on Page 33 to reflect new leave earnings.
September 7, 2017	• Policy revised to delete all reference to trainee appointments, per appointment September 7, 2017 types and career status.

Workforce Planning Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina to encourage all agencies to develop a Workforce Planning Program to proactively ensure the development and maintenance of a workforce capable of delivering quality services to our state's citizens. Workforce Planning is the strategic alignment of an organization's human capital with its business direction. It is a methodical process of analyzing the current workforce, determining future workforce needs, identifying the gaps between the present and future, and implementing solutions to enable an organization to meet its mission, goals and objectives. Simply stated, Workforce Planning is having the right number of people, with the right skill set or competencies, in the right jobs, at the right time.

§ 2. Purpose

To develop and sustain a high performing workforce requires aggressive recruitment and selection practices, having highly motivated employees, investing in the development of people working for the state and the ability to retain key talent. In coming years, the state anticipates significant increases in turnover, intensified competition for qualified employees, and fast-paced changes in how work is accomplished. As competition for talent increases, agencies will face significant challenges in recruiting and retaining talent in key positions to conduct the business of the state. Having a Workforce Planning Program highlights the people factor that must be taken into consideration to achieve desired business results.

Agencies are strongly recommended, but not required, to develop a Workforce Planning Program. The best practice is for the agency Workforce Planning Program to include:

1. The agency's mission, goals, or objectives;

Work Options Policy

Contents:

§ 1. Purpose

The Work Options Program is to develop and expand the use of variations in work schedules for State employees. This program is intended to increase productivity in State services, benefit employee morale, and expand job opportunities for women, handicapped, senior citizens and other groups in the labor force whose experience is not presently available to the State.

§ 2. Administration

This program shall be directed by the State Work Options Coordinator, an employee of the Office of State Human Resources. The Coordinator shall assist agencies in identifying positions which may be filled on a job-sharing basis. The State Human Resources Director, through the Work Options Coordinator, shall also make available options in work schedules and with the concurrence of the agency, determine the need for expansion of permanent part-time employment within State government. As necessary to enable such options, this may include adaptation or modification of related policies, such as those concerning leave or overtime, so long as the intent of these policies is correspondingly continued.

§ 3. Agency Responsibility

Each participating agency shall develop and promulgate necessary administrative rules for Work Options Programs, or expand existing programs as needed, to make available to its employees a variety of work options appropriate to the service schedules of its various work units. This program will be developed in cooperation with and technical assistance from the State Work Options Coordinator. Each participating agency shall designate an agency coordinator. Training sessions for agency personnel to instruct them in the use of available

Work Options Policy (cont.)

work options shall be provided as part of the State Human Resources Commission's Work Options Program.

§ 4. Reports

Each agency shall submit to the State Human Resources Commission a biennial report on the status of its Work Options Program, including any increase in the use of job-sharing, flexible work schedules, and other approved work options. The State Human Resources Commission shall submit to the General Assembly the required biennial report for all of State government.

§ 5. Restrictions

In fulfilling the stated purposes of this program, agencies shall take into reasonable account operating and service needs. Specifically, this program shall not be administered in a way that reduces the total number of hours a day a State office normally is open to serve the public.

§ 6. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5); Article 12; 126-4(5)

It is compliant with the Administrative Code rules at:

- 25 NCAC 01C .0509

§ 7. History of This Policy

Date	Version
December 1, 1981	• New policy provides for the development and expansion of the use of variations in work schedules for State employees.
June 1, 1982	• Basically relating to part-time or job sharing.

Work Schedule Policy

Contents:

§ 1. Standard Work Schedule

The standard workweek for full-time employees subject to the State Human Resources Act is forty hours per week and the normal workday schedule is five days per week, eight hours a day plus a meal period. Other schedules apply to part-time employees and some shift employees; agencies are responsible for determining the appropriate schedules for these employees.

Because of the nature of the various State activities, some positions require a workweek other than five days. The normal daily work schedule may not apply to educational, hospital and similar institutions, or work units with schedules geared to round-the-clock service.

§ 2. Meal Period Defined

The meal period may be scheduled within the normal work hours to meet the needs of the employee and the working unit but may not be used to shorten the workday. A bona fide meal period is a span of at least 30 consecutive minutes during which an employee is completely relieved of duty. It is not counted as hours worked. A so-called “meal period” of less than 30 consecutive minutes must be considered as hours worked for employees who are non-exempt as defined by the Fair Labor Standards Act.

Work Schedule Policy

§ 3. Variable Work Schedule

Agencies may choose to utilize a variable work schedule that allows employees to choose a daily work schedule and meal period which, subject to agency necessities, is most compatible with their personal needs.

Supervisors are responsible for arranging operating procedures that are consistent with the needs of the agency and the public it serves, and at the same time can accommodate, as far as possible, the employee's choice of daily work schedule within the established limits. If any adjustments of employee work schedules are necessary, this should be done as fairly and equitably as possible.

§ 4. Procedure for Variable Work Schedules

If an agency chooses to use a variable schedule, the following procedure applies:

- Each new employee shall be given detailed information about the variable work schedule and given the opportunity to select the schedule preferred prior to reporting for work. Work schedules are to be associated with individuals and not with positions, with the exception that there may be positions which must be filled on some predetermined schedule. In these exceptional cases, applicants shall be informed of this predetermined schedule prior to any offer and acceptance of employment.
- The employee and the supervisor shall agree upon the schedule to be followed, consistent with the needs of the agency.
- Each supervisor shall compile a record of the work schedules for all subordinates.
- Agency administrators shall be responsible for providing adequate supervision for each work unit during the hours employees are scheduled to work. This can be accomplished by sharing or by delegation of authority of supervisors.

§ 5. Limitation of Variable Work Schedule

The following limitations shall apply to variable work schedules:

- An employee who arrives later than scheduled, may be permitted to make up the deficit by working that much longer at the end of the workday if this is consistent with the work needs of the agency. Otherwise, the tardiness shall be charged to the appropriate leave category. Supervisors shall be responsible for taking appropriate

action to correct any abuse or misuse of this privilege which may include deductions from employee's pay.

- If an employee reports to work early, the employee may, with the supervisor's permission, begin work at that time and leave at a correspondingly early hour.
- If an employee leaves work early without permission, the time shall be deducted from the employee's pay or may be charged to the appropriate leave account.
- An employee may not work later than scheduled unless the supervisor has approved it due to workload.

§ 6. Adverse Weather

In the event of adverse weather conditions, the policy for charging leave outlined in the Adverse Weather Policy, will apply where the nature of the operation makes it possible. It is recognized that agencies providing essential services in health and safety will need to modify the policy in order to maintain adequate services to the public.

§ 7. Hours of Work Due to Time Change

When the time is changed from Eastern Standard Time to Daylight Savings Time, employees working during this interval only work seven (7) hours rather than eight (8) hours. The employees must be held accountable for the hour that no work is performed. The time may be charged to vacation leave or the employee may be allowed to make up the time within a reasonable length of time if it can be worked out satisfactorily with the immediate supervisor.

When the time changes from Daylight Savings Time to Eastern Standard Time, employees on duty at this change actually work a 9-hour shift rather than the usual 8-hour shift. The State, under the overtime pay policy, must compensate for this additional hour. In cases where the employees work in excess of 40 hours for the week, this must be compensated for at one and one-half times the regular rate.

§ 8. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5)

Work Schedule Policy

It is compliant with the Administrative Code rules at:

- 25 NCAC 01C .0500

§ 9. History of This Policy

Date	Version
January 1, 1950	Provided for establishment of a 5-day 40-hour work week schedule for certain categories of State employees on a 6-month trial basis to begin as of January 1, 1950.
June 15, 1950	5-day 40-hour workweek approved on a permanent basis.
January 29, 1962	Work schedule in Raleigh Area - June, July, August - 8:00 a.m. to 5:00 p.m.; Sept. through May - 8:30 a.m. - 5:30 p.m.
June 11, 1973	Flextime established on a temporary and experimental basis.
September 14, 1973	Flextime adopted on a permanent basis.
March 1, 1975	Daylight Savings Time - employees working only 39 hours rather than 40 hours during the week of the time change can charge their time to petty leave, annual leave or make up the time.
June 1, 1981	Approved a twelve-month pilot study. Beginning May 1, 1981, at N.C. Memorial Hospital for Registered Nurse positions in intensive care units only.
June 1, 1982	Approved policy after a year's trial for nurses at Memorial Hospital (and other State-run hospitals having similar situations) in intensive care units only.
August 1, 1985	Policy changed to make more flexible the beginning and ending hours of work and length of lunch hour.
October 1, 1992	Included the definition used by the Fair Labor Standards Act to clarify what constitutes a meal period. A provision is also included to recognize those part-time employees and some shift employees do not work the normal daily schedule; therefore, the agency may determine appropriate schedules for them. Other changes simply update the language in the policy.

Work Schedule Policy

April 1, 2008	Typographical error corrected.
April 1, 2020	Removed “if justified” from the second bullet under the Variable Work Schedule section. It appears to contradict the administrative code.

Workers' Compensation Policy

Contents:

Workers' Compensation Policy (cont.)

§ 1. Background about the State Workers' Compensation Program

§ 1.1. Statutory Authority and Roles in the State Process

The North Carolina Workers' Compensation Act (WC Act), Chapter 97 of the North Carolina General Statutes, governs claims for compensation for injuries arising out of employment. The North Carolina Industrial Commission maintains claim records, adjudicates disputes, and approves certain awards of benefits in accordance with the WC Act.

The Office of State Human Resources (OSHR), pursuant to Chapter 143, Article 63 of the General Statutes, administers the State Workers' Compensation Program (State WC Program) for all claims arising in State agencies. OSHR contracts with vendors to provide workers' compensation claim administration and related services.

The State is self-insured for workers' compensation liabilities. This means that each State agency is responsible for paying individual claim costs.[1] The Attorney General's Office represents State agencies in claim proceedings before the Industrial Commission.

§ 1.2. Who Is Included in the State WC Program

The State WC Program covers all agency and university full-time and part-time employees, along with State officers. This includes all State elected officials, members of the General Assembly, and those appointed to serve on a salaried, hourly, per diem, part-time, or fee basis. State employees are covered by the State WC Program whether they are permanent, probationary, time-limited, or temporary employees.[2]

Employees of one agency are excluded from the State WC Program. Claims of employees of the North Carolina Department of Public Instruction are administered through a separate workers' compensation program per N.C.G.S. § 115C-337. This Workers' Compensation Policy in the State Human Resources Manual applies only to the State WC Program, not to the Department of Public Instruction program.

[1] 25 NCAC 01E .0705(c).
[2] 25 NCAC 01E .0704. Although temporary State employees may be eligible for workers' compensation benefits, they are not eligible for leave. Therefore, the leave-related benefits described in this policy do not apply to temporary employee injuries.

Workers' Compensation Policy (cont.)

This policy applies to employees eligible for salary continuation pursuant to N.C.G.S. § 143-166.14 and § 115C-338.

§ 2. Purpose of This Policy

The purpose of this policy is to provide a brief overview of the State WC Program including the responsibilities of employees, employers, and OSHR. It is the goal of the State WC Program to consistently apply the WC Act, administrative rules, policies, and procedures to provide the benefits to which an injured employee is entitled under the WC Act.

§ 3. Responsibilities

§ 3.1. Employee Responsibility

An injured employee is responsible for making a workers' compensation claim pursuant to the WC Act. In accordance with the WC Act, no compensation shall be payable unless written notice is given within 30 days unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice, and the Industrial Commission is satisfied that the employer has not been prejudiced thereby.

An injured employee or the employee's legal representative shall:

- give notice of an accident to the employee's supervisor immediately following the accident;
- give written notice of an accident to the employer within 30 days after occurrence of the accident or death;
- obtain authorized medical treatment as directed by the employer or the State's claims administration vendor;
- timely provide written statements from authorized treating physician(s) regarding the employee's work status to supervisor;
- cooperate with authorized medical providers, vendors, and the employer; and
- if appropriate, file a claim with the Industrial Commission within two years from the date of injury or knowledge of an occupational disease.

Workers' Compensation Policy (cont.)

§ 3.2. Employer Responsibilities

Each State agency is responsible for administering an effective and efficient workers' compensation program. The agency shall ensure injured employees receive benefits which are paid with State funds to which the employee is entitled under the WC Act while controlling and containing claim costs. To meet these objectives, each agency shall:

- designate a Workers' Compensation Administrator responsible for ensuring appropriate reporting and monitoring of all agency claims;
- timely pay all claim costs;
- communicate workers' compensation policies and procedures to all employees and supervisors;
- report injuries as soon as notified to the State's claims administration vendor[3];
- communicate with the State's workers' compensation vendors, OSHR, and the Attorney General's office, as applicable, to assist in claims handling; and
- actively participate in claim-related decision-making processes, annual claim review meetings, mediations, Industrial Commission hearings, and settlement negotiations; and
- execute settlement documents as needed.

§ 3.3. Office of State Human Resources (OSHR) Responsibilities

OSHR shall:

- serve as the State WC Program information resource and liaison for employees and employers;
- provide consultation to agency staff in managing their workers' compensation programs regarding application of WC Act requirements, administrative rules, policies, and procedures;
- recommend action to agencies and the State's workers' compensation vendors to achieve optimum claim outcomes;

[3] The State's claims administration vendor shall make required injury reports to the Industrial Commission within five days from knowledge of any claim that results in more than one day's absence from work or that results in medical expenses that exceed the reportable amount established by the Industrial Commission.

Workers' Compensation Policy (cont.)

- engage in vendor contract oversight and monitoring, evaluate vendor effectiveness, and serve as liaison between workers' compensation vendors and State agencies; and
- develop training and educational materials for agency workers' compensation administrators.

§ 4. Workers' Compensation Leave

§ 4.1. Leave on Day of Injury

When an injured employee is treated on the date of injury by an authorized treating physician:

- If the authorized treating physician instructs the employee **not to return** to full duty or restricted duty work, the injured employee receives usual pay and no leave is charged for the day of injury.
- If the authorized treating physician **instructs the employee to return** to full duty or restricted duty work on the date of injury, the injured employee will not be charged leave for time spent obtaining authorized medical treatment and travel time to the authorized treating physician. If there are remaining hours in the employee's work shift for that day after treatment and travel, the injured employee may use any available leave.

An injured employee shall obtain a written statement from the authorized treating physician indicating whether the employee was instructed to return to full duty or restricted duty work on the date of injury and present it to the supervisor as soon as practical thereafter.

§ 4.2. Leave During Seven-Day Waiting Period

During the seven-day waiting period prior to eligibility for Workers' Compensation Leave as set forth in N.C.G.S. § 97-28, an injured employee must select one of the options listed below. Once an election is made, it may not be rescinded for the duration of the claim.

- **Option 1:** Employee may use any available accrued sick, vacation, bonus, and/or compensatory leave.

Workers' Compensation Policy (cont.)

- **Option 2:** Employee may go on leave without pay.[4]

If the injury results in a disability of more than seven days, the weekly disability compensation benefit shall be allowed from the first date of disability. If this occurs in the case of an employee who elected Option 1 during the waiting period, no adjustment shall be made for leave used for these days.

§ 4.3. Workers' Compensation Leave of Absence

After the N.C.G.S. § 97-28 waiting period is satisfied, an injured employee will be placed on Workers' Compensation Leave if the employee is:

- Full-time or part-time (half-time or more) permanent, probationary, trainee, or time-limited; and either:
- The employee is unable to return to full duty work; or
- The employer is unable to accommodate the injured employee's current work restrictions as certified by a written statement from the authorized treating physician.

§ 5. Details of Workers' Compensation Leave

§ 5.1. Vacation and Sick Leave Credits Continue

While on Workers' Compensation Leave, an injured employee continues accruing vacation and sick leave for use upon return to work.

§ 5.2. Other Leave Can Be Used to Supplement Compensation

When an injured employee is placed on Workers' Compensation leave of absence and if the employee is receiving Temporary Total Disability (TTD) compensation,[5] that employee may supplement weekly disability compensation by using a certain portion of any accrued and available paid leave, such as sick, vacation, compensatory, or bonus leave, earned prior to the injury.[6] In this situation, the Workers' Compensation Leave is referred to as "WC Leave of Absence with Supplement." The supplemental leave must be used only in

[4] 25 NCAC 01E .0707(a).
[5] Supplemental leave cannot be used by an employee receiving Temporary Partial Disability compensation.
[6] 25 NCAC 01E .0707(b).

Workers' Compensation Policy (cont.)

accordance with a schedule published by OSHR each year.[7] The Workers' Compensation Supplemental Leave Schedule is available on the OSHR website at https://oshr.nc.gov/workers-compensation-supplemental-leave-schedule. An injured employee may be eligible to receive donated leave through the Voluntary Shared Leave program for use as supplemental leave. The use of Voluntary Shared Leave is limited in use to the supplemental leave schedule published by OSHR.[8]

Supplemental leave is paid at the employee's hourly rate of pay and is subject to State and Federal withholding taxes and Social Security, but not subject to retirement withholding.

§ 6. Additional Situations Where Leave May Not Be Required

§ 6.1. Follow-up Authorized Medical Treatment After Return To Work

An employee who was injured working for a State employer, and who has returned to work, is not charged leave for time lost from work for authorized injury-related medical treatment that occurs during regularly scheduled work hours. Time away from work attending this authorized medical treatment shall be noted in the injured employee's payroll records. Paid time is limited to reasonable time for authorized injury-related medical treatment and travel. Any other time away from work for the medical treatment or travel shall be charged to any earned and available paid leave balances, such as sick, vacation, compensatory, or bonus leave. If no paid leave balance is available, the excess time away from work shall be leave without pay.

If an employee previously incurred a compensable injury while working for another State employer, the Workers' Compensation administrator or human resources representative of the current employing agency shall contact the prior State employer to confirm the employee's attendance at authorized injury-related medical appointments. A State employee who was injured while working for a non-State employer, and who has returned to work, is charged leave for time away from work for injury-related medical treatment. This time shall be charged to any earned and available paid leave balances, such as sick, vacation, or compensatory, or bonus leave. If no paid leave balance is

[7] 25 NCAC 01E .0707(b).
[8] 25 NCAC 01E .1302(d).

Workers' Compensation Policy (cont.)

available, then the time shall be leave without pay. If there are questions about whether an employer is a "State employer" or "non-State employer" under this paragraph, administrators should contact OSHR for guidance.

§ 6.2. Attending Workers' Compensation Legal Proceedings

Employees, as follows, are not charged leave for reasonable time away from work attending Workers' Compensation-related legal proceedings:

- The injured employee, a witness, or another employee requested to attend by the Attorney General's Office;
- An employee subpoenaed by either party;
- An employee whose attendance is approved by their employing agency.

§ 7. Vacation and Sick Leave Payouts

§ 7.1. Leave Payouts If Employee, After Workers' Compensation Leave, Does Not Return to Work Before Separation

If an injured employee does not return to work and separates following Workers' Compensation leave, the employee shall be paid a lump sum for:

a. Unused vacation already earned as of the day of injury;
b. Unused accrued vacation leave accumulated only during the first 12 months of Workers' Compensation Leave;
c. Unused accrued sick leave accumulated only during the first 12 months of Workers' Compensation Leave; and
d. Any unused eligible bonus leave eligible for payout granted on or after the date of injury.[9]

§ 7.2. Leave Payouts If Employee, After Workers' Compensation Leave, Returns to Work

When an injured employee returns to work following a period of Workers' Compensation Leave, the employee's vacation leave balance may exceed the 240-hour

[9] 25 NCAC 01E .0210(h)(1)-(3).

Workers' Compensation Policy (cont.)

maximum, as the employee has been unable to exhaust leave during the period of Workers' Compensation Leave. The excess vacation leave shall be handled as follows:

- The 240-hour maximum to be carried forward to the next calendar year may be exceeded by the amount of vacation accumulated during Workers' Compensation Leave. The excess vacation leave may be used after returning to work or carried on the leave account until the end of the calendar year at which time any vacation leave exceeding the 240-hour maximum shall be converted to sick leave.[10]
- If the employee separates for any reason during the period (i.e. calendar year) that excess vacation is allowed, the employee shall be paid a lump sum for:
  a. Current balance of vacation leave as of date of separation (which includes up to a maximum of 240 hours plus unused vacation leave accrued during the most recent period of Workers' Compensation Leave prior to separation); and
  b. Any unused bonus leave that is eligible for payout granted on or after the date of injury.[11]

§ 8. Impact of Workers' Compensation Leave on Employee Benefits and Salary

§ 8.1. Health Insurance

While on Workers' Compensation Leave prior to separation, an injured employee may elect to continue or not continue health insurance coverage under the State Health Plan or other employer-based health plan. Injured employees are responsible for paying the employee's share of monthly premiums for the employee coverage and premiums for any dependent coverage.

Employers should provide detailed information to injured employees regarding health insurance coverage continuation and premium payments while an injured employee is on Workers'
Compensation leave.

[10] 25 NCAC 01E .0210(i).
[11] 25 NCAC 01E .0210(i)(1)-(3).

Workers' Compensation Policy (cont.)

§ 8.2. Retirement Service Credit

While on Workers' Compensation leave, an injured employee does not receive retirement service credit. After returning to work, an injured employee may purchase service credits for the time period on Workers' Compensation Leave.[12] Upon employee request, the Retirement System will provide a statement of the cost and date by which purchase must be made. If purchase is not made by the deadline date, the cost must be recomputed.

§ 8.3. Total State Service Credit

While on Workers' Compensation Leave, an injured employee remains in pay status and continues to receive total state service credit.

§ 8.4. Longevity Pay

While on Workers' Compensation Leave, an injured employee remains in pay status and continues to receive longevity credit. Injured employees eligible for longevity pay receive their annual payments.

§ 8.5. Severance Salary Continuation Eligibility

While on Workers' Compensation leave, an injured employee is not excluded from eligibility for severance salary continuation if the employee otherwise meets the eligibility requirements set forth in 25 NCAC 01D .2702.

§ 8.6. Reinstatement of Salary

Upon return to work following a period of Workers' Compensation leave, an employee's salary shall be computed based on the last salary plus any legislative increase to which the employee would have been entitled while the employee was out on Workers' Compensation Leave. Any performance increase which would have been given, based on the performance evaluation of the employee for the period before the injury, may be included in the reinstatement of salary, or it may be given on any payment date following reinstatement.

[12] N.C.G.S. 135-4(r).

Workers' Compensation Policy (cont.)

§ 9. Return to Work

§ 9.1. Work Assignments

When an injured employee is released to return to work by the authorized treating physician and the employee has not been separated, the employer should act as follows:

1. If an injured employee has reached maximum medical improvement and has been released to return to work by the authorized treating physician **without restrictions or with restrictions that can be accommodated**, the agency shall return the employee to the same position held prior to the period of Workers' Compensation leave.[13]
2. If an injured employee has reached maximum medical improvement and has been released to return to work by the authorized treating physician **but has been assigned work restrictions which cannot be accommodated in the previous position**, the agency shall attempt to place the employee in another position that is suitable to the employee's capacity.
3. If an injured employee **has not** reached maximum medical improvement but has been released to return to work **with restrictions assigned by the authorized treating physician that can be accommodated**, the agency shall provide a work assignment suitable to the employee's capacity and approved by the treating physician if such work is available.

§ 9.2. Refusal of Suitable Employment

If an employee who is released to return to work by written statement of the authorized treating physician refuses suitable employment, the employer shall request termination of disability compensation payments and may implement separation procedures.

[13] Note that "accommodation" may not mean the same thing in Workers' Compensation as under the Americans with Disabilities Act.

Workers' Compensation Policy (cont.)

§ 10. Separation

§ 10.1. Generally

The WC Act does not prohibit the separation of an employee who is receiving workers' compensation benefits. Employees should not be separated in retaliation for filing a Workers' Compensation claim (see § 10.3 below).

Separation may occur only when authorized by 25 NCAC 01C .1007, the Administrative Code rule on separation. This section of the policy summarizes the text on this topic in the rule.

Note: This procedure applies **only** to employees who are on Workers' Compensation leave of absence or who are working with temporary or permanent work restrictions due to a work-related injury.[14]

- The employee may be separated from state employment when:
  - The employee is unable to return to all the position's essential job 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 medical condition.[15]
- The separation can occur **no sooner than** the earliest of the following dates:
  - 12 months after the date of the employee's work-related injury; or
  - When the employee has reached maximum medical improvement for the work-related injury for which the employee is on Workers' Compensation Leave (if the agency is unable to accommodate the employee's permanent work restrictions related to this injury),[16]
- Separation is allowed in these circumstances **notwithstanding any leave balances**.[17]

[14] 25 NCAC 01C .1007(a)(3), second and third clauses. See the Separation Policy for a more general description of separation procedures.
[15] 25 NCAC 01C .1007(a)(3), fourth through sixth clauses.
[16] 25 NCAC 01C .1007(a)(3)(A)-(B).
[17] 25 NCAC 01C .1007(a)(3), first clause. This means that in these circumstances, an employee may be separated regardless of any sick, vacation, bonus, incentive, or compensatory leave balances; however, the rule makes clear that separation does not affect any rights of the employee to short-term or long-term disability. 25 NCAC 01C .1007(d).

Workers' Compensation Policy (cont.)

- Separation is allowed in these circumstances **only after written notice**. See below for the details of the notice procedures described in the rule.

§ 10.2. Separation Notice Procedures

Written notice for a separation requires two letters, as described below, with specific details that should be included in each letter.

- The agency should send the employee written notice of proposed separation in a Pre-Separation Letter at least 15 calendar days prior to the agency's planned date of separation. The letter must include:
  - Planned date of separation;
  - Efforts undertaken to avoid separation;
  - Why efforts were unsuccessful; and
  - The deadline for the employee to respond in writing (which must be no less than 5 calendar days prior to the agency's planned date of separation).[18]
- If the agency and the employee are unable to agree on terms of continued employment, or if the employee does not respond to the Pre-Separation Letter, the agency should send the employee a written notice of separation, called a Letter of Separation. This letter may be sent **no earlier than 20 calendar days** after the Pre-Separation Letter was sent to the employee. The letter must include:
  - Actual date of separation;
  - Specific reasons for separation; and
  - The employee's right of appeal.[19]

NOTE: In these circumstances, it is often helpful for HR staff to consult with the agency's HR Director and legal counsel to ensure the letters are prepared appropriately.

It is recommended, but not required, for the agency to send the "Pre Separation Letter" and "Letter of Separation" via certified mail. An agency may also wish to send such letters via other means, such as e-mail, first class U.S. mail, or Federal Express, in addition to certified mail. Agencies should confer with their legal counsel on when a letter sent by multiple modes of transmission would be considered received by the employee.

[18] 25 NCAC 01C .1007(b).
[19] 25 NCAC 01C .1007(c).

Workers' Compensation Policy (cont.)

§ 10.3. No Retaliation

Employees must not be separated, suspended, demoted, or have any other adverse action taken against them regarding terms, conditions, privileges, or benefits of employment in retaliation for filing an injury report or workers' compensation claim or participating in any investigation or proceeding related to the Workers' Compensation Act.[20]

§ 11. Further Resources and Training Materials

The Office of State Human Resources (OSHR) makes available additional Workers' Compensation resources for state employees and supervisors on the OSHR website at https://oshr.nc.gov/workers-compensation. These materials include frequently asked questions for injured employees, a handbook for employees and supervisors, and a variety of resources for Workers' Compensation administrators.

In addition, OSHR offers a detailed, multiple-module training program, the Qualified Workers' Compensation Professionals Program, that can allow agency administrators to obtain designation. For information on this program, see the OSHR website at https://oshr.nc.gov/qualified-workers-compensation-professional-certification/open.

§ 12. Sources of Authority

This policy is issued under the authority of:

- N.C.G.S. § 126-4(10), authorizing the State Human Resources Commission to establish policies on "[p]rograms of employee assistance, productivity incentives, equal opportunity, safety and health…, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration"
- N.C.G.S. § 143-581, which requires the Office of State Human Resources to "establish a written program for State employee workplace safety, health, and workers' compensation"
- N.C.G.S. § 143-583, which requires the Office of State Human Resources to "[a]dopt policies that shall govern the administration of the workers' compensation program"

[20] This is a summary of N.C.G.S. § 95-241; see the statute for full details.

Workers' Compensation Policy (cont.)

This policy is both established by the State Human Resources Commission under N.C.G.S. § 126-4(10) and adopted by the Office of State Human Resources under N.C.G.S. § 143-583.

In addition, this policy is compliant with the following statutes and rules:

- Chapter 97, Article 1 of N.C.G.S. entitled "Workers' Compensation Act"
- 25 NCAC 01C .1007, on separation
- 25 NCAC 01E Section .0700, the rules on Workers' Compensation Leave
- 25 NCAC 01E .1302, on voluntary shared leave

§ 13. History of This Policy

Date	Version
Worker's Compensation Leave - Summary of Revisions	
January 1, 1952	• Adopted Workman's Compensation Leave Policy - may take sick and annual leave or may reserve for personal use.
January 1, 1973	• Added option to exhaust sick leave only without having to exhaust annual leave.
January 1, 1976	• Added option for taking sick leave during waiting period for WC.
March 1, 1977	• Policy changed in leave for Workmen's Compensation to state that an option would be allowed for an employee to use any portion of sick leave before going on leave for Workmen's Compensation, rather than being forced to use all of it before going on leave.
March 1, 1978	• Combined all options to provide for use of sick and annual leave.
July 1, 1983	• Deleted from the "Pay Status" definition the present stipulation not to exceed 12 months.
October 1, 1983	• Clarification to read "when on workers' compensation leave". AND allows sick and/or vacation leave to be used during the waiting period that is required by the Workers' Compensation Act; AND added that it is the responsibility of the employee to report an accident to the agency; AND allows sick and vacation leave to be accumulated all the time an employee is on workers' compensation leave but limits the amount that

Workers' Compensation Policy (cont.)

	can be paid if employee does not return. Also, includes provision for paying hospitalization while employee on WC leave.
October 1, 1987	• Entire policy rewritten. Requires payment of WC. Allows partial use of leave to supplement WC payments. Added Return to Work Policy.
December 1, 1987	• Paragraph on Failure to Cooperate deleted. • Administration of Workers' Compensation separated and moved to Salary Administration Section.
June 1, 1988	• Added provision for leave with pay (not charged to vacation or sick) to be provided for day of injury and for returning to doctor for medical treatment.
September 1, 1989	• Incorporate the disability compensation aspect of WC program. Clarifies responsibilities when employee refuses WC benefits.
December 1, 1993	• Revised to conform to the changes to G.S. 126-8 which requires that excess vacation be converted to sick leave. • The special note regarding exhausting leave has been deleted since it is no longer needed. The provision for paying longevity to employees while on workers' compensation has always been in the Longevity Policy. It is being included in the WC Policy for clarification. <u>Worker's Compensation Administration – Summary of Revisions</u> • Deleted "usually" involving third party liability. • Increased amount of medical expenses from $1,000 to $2,000. Replaced requirement of return employee to the "original position" to "same position or one of like seniority, status and pay. • Deleted provision under Work Placement efforts that agency can take employee off WC. Law requires continuing an employee on WC after they have reached maximum medical

Workers' Compensation Policy (cont.)

	improvement but are unable to return to work or the employer does not have a position for them to return.
August 1, 1998	• Note is added stating that use of leave options may not be rescinded subsequent to initial election. The statement is being added to clearly state the manner in which the rule is to be interpreted. • Clarifies that leave to be used as supplemental leave must be leave which was earned prior to the injury (leave accrued during WC leave may not be used). • Deletion of paragraph requiring agencies to arrange for Vocational Rehabilitation assistance through the NC Division of Vocational Rehabilitation. This requirement is no longer necessary, as agencies may now obtain this assistance from many other sources as well. Leave choice to the agency. <u>Worker's Compensation Administration – Summary of Revisions</u> • Changed name of responsible division in OSP from Employee Safety & Health to Employee Risk Control.
October 21, 1999	• Use of Leave clarified: the leave time allowances for employees who have not missed work or have not missed enough work to meet the statutory waiting period before benefits can begin, but still must miss work periodically for medical or therapy treatment. These individuals will not be changed leave time without regard to whether they have left and returned to work. • Leave Paid If Employee Does Not Return clarified that: (a) this applies to employees who were on workers' compensation leave at the time of the separation, (b) that a maximum of only 12 months of leave accumulated while on WC will be paid if the employee does not return from WC leave, and (c) that the leave is considered to be exhausted with the lump sum leave payments as described in the WC leave policy.

Workers' Compensation Policy (cont.)

	The work "exhausted" now clearly ties to the Separation for Unavailability When All Leave Has Been Exhausted policy to clarify that employees separated for that reason will not be permitted to exhaust leave which accumulated while on WC leave. • Hospitalization insurance clarified that the insurance coverage will be in compliance with State Health Plan Guidelines. This was added to allow the flexibility of addressing those cases where the employee becomes unable to afford the employee portion of their insurance if they have an HMO, and the possibility of switching them to the State Health Plan. <u>Worker's Compensation Administration – Summary of Revisions</u> • For clarification, changes were made to the sections describing agency and OSP responsibilities to reflect the affect third party administration will have on program administration. Added verbiage acknowledging that the employer's designee (the TPA) may be responsible for filing the Form 1-9.
September 30, 2002	• Added provisions for bonus leave.
June 1, 2003	<u>Worker's Compensation Administration – Summary of Revisions</u> • Election of Third-Party Recovery (changed from Employee Refusal of Coverage) - Clarified that purpose of signed statement is to document that it was the employee's decision not to file a claim for benefits at the time of the accident. Use of term "release" was misleading as employee may still file a claim. • Return to Work – Clarified the following: o employee does not have to be placed on WC leave for return-to-work efforts to begin, o employee has re-employment priority, o ensure pay equity when employee returns permanently to a lesser grade,

Workers' Compensation Policy (cont.)

	○ remove time limit on work placement efforts, ○ employer has option of keeping employee on WC leave or separating the employee, and ○ provide a link to the Separation Due to Unavailability Policy.
March 1, 2005	• Add paragraph to clarify that an employee continues to earn total state service while on Workers' Compensation Leave.
August 7, 2019	• Revises language to clarify employee's and employer's liability for payment of health insurance premiums while employee is on Workers' Compensation Leave of Absence. Employee pays employee portion of premium and premium for covered dependents. Employer pays employer portion of premium. Legislative changes have rendered the prior policy language obsolete
October 21, 2019	• Combines two current OSHR policies, Workers' Compensation Administration and Workers' Compensation Leave, into one consolidated policy. • Revisions remove unnecessary information and clarify content to assist human resources staff, time administrators, and workers' compensation administrators with handling matters related to workers' compensation reports
November 30, 2023 (effective January 1, 2024)	• In policy title, changed placement of apostrophe by altering "Worker's" to "Workers'". • Reorganized policy by subject, and clarified language throughout the policy. Removed some acronyms to make the policy easier to read. • In renumbered Section 4 (entitled "Workers' Compensation Leave"), added detail to explain precisely how leave works when an employee is treated on the date of injury by an authorized treating physician. • In renumbered Section 5.2 ("Other Leave Can Be Used to Supplement Compensation"), added additional language

Workers' Compensation Policy (cont.)

	to make clear that Workers' Compensation Leave of Absence with Supplement can be used only in accordance with a schedule published by OSHR each year. • In renumbered Section 7.1, clarified the lump sum leave payout when an employee does not return to work prior to separation following Workers' Compensation Leave. • In renumbered Section 7.2, clarified the lump sum leave payout when an employee does return to work following Workers' Compensation Leave, then separates for any reason during the period (i.e., calendar year) that excess vacation is allowed. • Added a section on separation (Sections 10.1 and 10.2), explaining the requirements of the Administrative Code rule on separation (25 NCAC 01C .1007). • Added a section on retaliation (Section 10.3), quickly summarizing the legal requirements in this area. • Added a cross-reference (in Section 11) to the training on Workers' Compensation provided by OSHR. • Revised Table of Contents. Added detail to the Source of Authority section.

Workforce Planning Policy

Contents:

§ 1. Policy

It is the policy of the State of North Carolina to encourage all agencies to develop a Workforce Planning Program to proactively ensure the development and maintenance of a workforce capable of delivering quality services to our state's citizens. Workforce Planning is the strategic alignment of an organization's human capital with its business direction. It is a methodical process of analyzing the current workforce, determining future workforce needs, identifying the gaps between the present and future, and implementing solutions to enable an organization to meet its mission, goals and objectives. Simply stated, Workforce Planning is having the right number of people, with the right skill set or competencies, in the right jobs, at the right time.

§ 2. Purpose

To develop and sustain a high performing workforce requires aggressive recruitment and selection practices, having highly motivated employees, investing in the development of people working for the state and the ability to retain key talent. In coming years, the state anticipates significant increases in turnover, intensified competition for qualified employees, and fast-paced changes in how work is accomplished. As competition for talent increases, agencies will face significant challenges in recruiting and retaining talent in key positions to conduct the business of the state. Having a Workforce Planning Program highlights the people factor that must be taken into consideration to achieve desired business results.

Agencies are strongly recommended, but not required, to develop a Workforce Planning Program. The best practice is for the agency Workforce Planning Program to include:

1. The agency's mission, goals, or objectives;
2. The agency's current workforce and how that workforce will change over time;

Workforce Planning Policy (cont.)

3. The agency's future workforce projections based on the analysis of the current and future demands;
4. The agency's gaps identified in the workforce analysis;
5. The agency's solutions to fill the gaps in order to maintain their mission, goals, or objectives; and
6. The agency's plan to monitor the solutions and their effectiveness.

§ 3. Support for Workforce Planning Programs

1. The Office of State Human Resources will provide access to an analytical tool that offers workforce planning decision support, reporting, and analytical capabilities through an HRIS system (Integrated HR Payroll System).
2. OSHR's Talent Acquisition Division is available to provide:
   - Consultation services for the implementation of best practice solution strategies in the areas of staffing, motivation, development and retention
3. OSHR's Diversity and Workforce Services Division is available to provide guidance and support to ensure a diverse workforce. See the Equal Employment Opportunity Policy for further details.
4. NC Works, a program of the Department of Commerce, will provide a biennial workforce planning report that, at the state level:
   - Forecasts human capital needs necessary for organizations to achieve their strategic goals;
   - Interfaces with workforce supply and demand information; and
   - Measures progress and identify obstacles and barriers to success.

§ 4. Agency Responsibilities

Agencies who choose to develop a Workforce Planning Program should consider the following activities:

1. Adopt a Workforce Planning Model that best meets agency needs and includes:
   - Designation of a workforce planning coordinator to champion, organize, and lead the initiative,
   - Support and involvement of organizational leadership, and

Workforce Planning Policy (cont.)

- Communication and involvement of managers and supervisors in workforce planning activities.

2. Develop a Workforce Planning Program plan outlining workforce planning initiatives that includes:
   - Identification of key positions, positions "hardest hit" by attrition, and positions most difficult to fill,
   - Conducting workforce forecasting and analysis to identify staffing and competency gaps, turnover trends, and projected retirements, and
   - Developing an action plan and implement solution strategies to address and resolve identified problems.
3. Update workforce plan on an annual basis or as needed.

§ 5. Sources of Authority

This policy is issued under any and all of the following:

- N.C.G.S. § 126-4(4), which authorizes the Commission to establish policies and rules governing "[r]ecruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants."

  This policy also is compliant with N.C.G.S. § 126-19(c), which requires the Director of the Office of State Human Resources to "provide services of Equal Employment Opportunity technical assistance, training, oversight, monitoring, evaluation, support programs, and reporting to assure that State government's work force is diverse at all occupational levels."

§ 6. History of This Policy

Date	Version
July 1, 2007	First version
February 16, 2023	Revised policy to: • Include best practices for a workforce planning program • Make clear that workforce planning programs are recommended, but not required.

Workforce Planning Policy (cont.)

	• Identify the workforce planning resources available from the NC Works program at the Department of Commerce. • Adjust OSHR's responsibilities to meet current resources, in light of the fact that the state's staff dedicated to workforce planning are at the Department of Commerce. • Add Sources of Authority section.

Workplace Violence Policy

Contents:

§ 1. Policy

It is the policy of North Carolina State government that all agencies shall provide a safe workplace for employees that is free from violence. Types of violent acts that are prohibited include, but are not limited to, threats, intimidation, bullying, stalking, domestic violence, physical attack or property damage by or against employees. Such actions, including the use of weapons, will subject the perpetrator to serious disciplinary action and possible criminal charges. Employees acting in good faith who report real or implied violent behavior will not be subject to retaliation or harassment based upon their report. All incident reports shall be confidential and released only as permitted by applicable law.

§ 2. Purpose

The purpose of this policy is to establish preventative measures, hold perpetrators of violence accountable, and support victims of workplace violence. Committing violent acts, whether on-duty or off-duty, has the potential to impact an employee's ability to perform their job. The State is guided by the Federal Occupational Safety and Health Act of 1970 that requires employers to provide their employees with a safe and healthy work environment. It is intended that all useful management tools be employed to accomplish the dual purpose of reducing the effects of violence on victims and providing consequences to those who perpetrate violence. It is also intended that management utilize available resources such as an Employee Assistance Program (EAP), law enforcement, appropriate Human Resources

divisions (Employee Relations, Equal Employment Opportunity, etc.), and applicable personnel policies and procedures.

§ 3. Definitions

Bullying: Is unwanted offensive and malicious behavior which undermines an individual or group through persistently negative attacks. There is typically an element of vindictiveness and the behavior is calculated to undermine, patronize, humiliate, intimidate, or demean the recipient. The behavior typically is severe or pervasive and persistent, creating a hostile work environment. Behaviors may be considered discriminatory if they are predicated on the targeted person's protected class (refer to the Unlawful Workplace Harassment Policy for additional information and procedures for discriminatory harassment).

Cyber-Bullying: Uses technology to intentionally harm others through hostile behavior, as well as threatening, disrespectful, demeaning, or intimidating messages. This is bullying that occurs via the Internet, cell phones, or other electronic devices (e-mails, IMs, text messages, blogs, pictures, videos, postings on social media, etc.). Refer to the Unlawful Workplace Harassment Policy for additional information and procedures for discriminatory harassment.

Domestic Violence: Is the use of abusive or violent behavior, including threats and intimidation, between people who have an ongoing or prior intimate relationship. This could include people who are married, divorced, separated, living or lived together, or currently or previously dated.

Intimidation Is engaging in actions that include but are not limited to behavior intended to frighten, coerce, or induce duress.

Physical Attack: Is unwanted or hostile physical contact such as hitting, fighting, pushing, shoving, or throwing objects.

Property Damage: Is intentional damage to property and includes property owned by the State, employees, visitors, or vendors.

Reasonable Suspicion: Is a degree of knowledge enough to induce the belief that the circumstances being presented are more likely to be true than not. Reasonable Suspicion must be based on an articulable, specific and objective basis and may include direct observation and/or information received from a source believed to be reliable.

Workplace Violence Policy

Stalking: Involves harassing or pestering an individual, whether in person, in writing, by telephone, or through an electronic format. Stalking also involves following an individual, spying on them, alarming the recipient, or causing them distress, and may involve violence or the fear of violence.

Threat: Is the expression of intent to cause physical or mental harm. An expression constitutes a threat without regard to whether the party communicating the threat has the present ability to carry it out and without regard to whether the expression is contingent, conditional, or future.

Weapon: Is a device, instrument, material or substance used to or capable of causing death, bodily injury, or damage to property. Weapons include but are not limited to: an explosive; a device principally designed, made or adapted for delivering or shooting an explosive, chemical, biological, or radiological weapon; a firearm such as a machine gun, rifle, shotgun, or handgun; a firearm silencer; sharp object such as a knife or other blade; or any other device used for the infliction of or threat of bodily injury, damage to property, or death.

Workplace Violence: Includes, but is not limited to, intimidation, bullying, cyber-bullying, stalking, threats, physical attacks, domestic violence, or property damage and includes acts of violence committed by State employees, clients, customers, relatives, acquaintances, or strangers against State employees in the workplace.

§ 4. Coverage

This policy applies to full-time and part-time employees with permanent, probationary, trainee, time-limited permanent, or temporary appointments. This policy applies to the conduct of an employee while functioning in the course and scope of employment as well as off-duty violent conduct that has a potential adverse impact on a State employee's ability to perform the assigned duties and responsibilities.

§ 5. Prohibited Actions and Sanctions

It is a violation of this policy to:

- Engage in workplace violence as defined herein;
- Use, possess, or threaten to use an unauthorized weapon during a time covered by this policy; or

- Misuse authority vested to any employee of the State of North Carolina in such a way that violated this policy.

A violation of this policy shall be considered unacceptable personal conduct as provided in the Disciplinary Action, Suspension and Dismissal Policy. Acts of violence, as defined herein, may be grounds for disciplinary action, up to and including dismissal.

An act of off-duty violent conduct may also be grounds for disciplinary action, up to and including dismissal. In these situations, the agency must demonstrate that the disciplinary action is supported by the existence of a rational nexus between the type of violent conduct committed and the potential adverse impact on a State employee's ability to perform the assigned duties and responsibilities.

Examples of prohibited conduct include, but are not limited to, the following:

- Physically assaulting an individual;
- Communicating a threat to an individual or his/her family, friends, associates, or their property;
- Intentionally destroying or threatening to destroy property owned, operated, or controlled by the State;
- Intimidating or attempting to coerce an employee to do wrongful acts, as defined by applicable law, administrative rule, policy, or work rule that would affect the business interests of the State;
- Stalking or intending to place another person in reasonable fear for his or her safety; or
- Possessing or using firearms, weapons, or any other dangerous devices on state property in an inappropriate manner or without authorization.

§ 6. Employee Assistance Program

When a threat has been reported or management determines that a potential for violence exists, management may require an employee to undergo an assessment to determine the risk of danger. The Employee Assistance Program (EAP) can assist agencies by facilitating a referral to an appropriate resource for this assessment.

Management may also recommend EAP services to support employees who are the victim of workplace violence.

Workplace Violence Policy

§ 7. Authorized Exceptions to Policy

Some State employees may be required as a condition of their work assignment to possess firearms, weapons or other dangerous devices, or permitted to carry them as authorized by law.

An employee may possess a weapon if possession is:

- In compliance with North Carolina law;
- Authorized by the agency/university head or designee;
- Used by an employee who is a certified law enforcement officer;
- Required as a part of the employee's job duties with the State of North Carolina; or
- Connected with the training received by the employee in order to perform the responsibilities of their job with the State of North Carolina.

Possession of weapons in federal, state, and local buildings may or may not be permitted depending on the applicable statutes covering such premises.

§ 8. Support and Protections

§ 8.1. Agency Efforts for Victims

The agency shall make efforts to protect victims of workplace violence by offering all available and reasonable security measures. Victims may also need special accommodations or adjustments to their work schedule, location, or working conditions in order to enhance their safety. The agency shall accommodate these requests and needs whenever possible and appropriate. The agency shall work closely with victims to ensure that both the needs of the victims and the agency are addressed.

Management is expected to work in collaboration with the Human Resources department to offer support to victims of workplace violence, which includes domestic violence, and ensure all appropriate consultative resources are available. This support should include encouragement of the victim to use the services of the Employee Assistance Program (EAP), if available.

In addition, management shall work with their Human Resources department and use their discretion to grant a victim leave time, including but not limited to time for medical, court, or counseling appointments related to trauma and/or victimization. The following options should be considered:

- Flex Scheduling
- Vacation Leave
- Sick Leave
- Leave without Pay
- The use of Paid Leave to allow management to transition a victim, if necessary, to a new work schedule, location, or working conditions. Management is not required to provide paid leave in this situation; it is optional for the agency.
    - Any paid leave should be recorded as Other Management Approved Leave under code 9530.
    - Unless an exception is granted by the Office of State Human Resources, paid leave in this situation is limited to no more than one week.
- Safe Days (as defined below)

§ 8.2. Safe Days

Consistent with the Executive Directive issued by the Governor on October 23, 2019, Cabinet agencies and other offices for which the Governor has oversight responsibility shall permit eligible employees to use earned Sick Leave and Vacation Leave to:

i. Receive services from a local domestic violence agency, sexual assault crisis center, or any other intimate partner violence or sexual violence services organization after surviving domestic violence, sexual assault, or stalking;

ii. Obtain legal services or social services after surviving domestic violence, sexual assault, or stalking, including but not limited to meeting with an attorney, obtaining a restraining order, or preparing for or participating in any civil or criminal legal proceeding related to domestic violence, sexual assault, or stalking;

iii. Relocate to protect their safety or their families' safety from domestic violence, sexual assault, or stalking, including but not limited to securing temporary or permanent housing or enrolling their children in a new school; or

iv. Take other steps necessary to protect or restore their physical, mental, emotional, and economic well-being or the well-being of an immediate family member who is recovering from domestic violence, sexual assault, or stalking.

This use of Sick Leave and Vacation Leave is in addition to, not in replacement of, the options listed above in § 8.1 of this Policy.

Workplace Violence Policy

§ 9. Retaliation

This policy prohibits retaliation against any employee who, in good faith, reports a violation of this policy. Every effort will be made to protect the safety and anonymity of anyone who comes forward with concerns about a threat or act of violence.

§ 10. Reporting Responsibilities

Employees should immediately report any incident or potential incident of workplace violence, including new or existing protective orders, to their supervisor or their agency Human Resources department as soon as it is safe to do so. The incident will be discussed with the employee to assess the situation and evaluate threats of potential violence.

If an employee reports a workplace violence incident to the supervisor, the supervisor should then notify the Human Resources department, including the agency Employee Relations/EEO Manager and Safety Leader, or designee. If the incident presents a risk to the lives or safety of State employees, volunteers, interns, visitors or threatens property, the employee or supervisor shall call the State Capitol Police or the respective departmental, university, or local Law Enforcement Agency immediately.

Agency management will assess the situation/circumstances and direct immediate action as needed to defuse the situation. Possible actions may include:

- Coordination with law enforcement and emergency services personnel;
- Internal communications within the agency; or
- Communication with media and/or family members (via designated employees such as the Public Information Officer or Communications Department,).

The supervisor or the designated Human Resources employee should document the incident using the agency Workplace Violence Incident Report as soon as possible but no later than 15 calendar days after the alleged incident. Additional documentation may be necessary if there is a worker's compensation claim, OSHA recordable injury, or the incident qualifies as workplace harassment. A report of workplace violence is not equivalent to a formal grievance as defined by N.C.G.S. § 126-34.01.

Agency management shall conduct an internal investigation as circumstances warrant. Agency management shall determine if disciplinary action is warranted and ensure that the action is consistent with agency Human Resources policy.

Workplace Violence Policy

§ 11. Agency Responsibilities

The agency head or university chancellor shall create and maintain a workplace designed to prevent and manage workplace violence. This shall be done by developing a comprehensive workplace violence prevention and management program. Each workplace violence program shall, at a minimum, include:

- A statement establishing that workplace violence is prohibited.
- Designation of responsibility for the overall implementation of a workplace violence prevention and management program. The responsible individual may choose to establish a crisis management team approach or develop their own system that identifies and mobilizes appropriate consultative resources.
- A written workplace violence prevention and management plan including procedures for:
  - Disseminating the agency's workplace violence plan to new and existing employees;
  - Reporting of violations of the agency's workplace violence procedures by employees and supervisors;
  - Investigating a report of violation of this policy or agency procedures including a description of agency preparedness and precautionary measures to be taken in responding to acts or threats of violence;
  - Providing instruction to all employees regarding proper response to acts or threats of violence;
  - Reporting, collecting, and maintaining information regarding incidents of workplace violence; and
  - Facilitating critical incident stress debriefings for employees who have been affected by an event related to trauma and victimization.

§ 12. Source of Authority

This policy is issued under any and all of the following sources of law:

- This policy is issued under the authority of N.C.G.S. § 126-4(10), which authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish "[p]rograms of employee assistance, … safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs

and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration."

§ 13. History of This Policy

Date	Version
August 1, 1995	• New policy on workplace violence.
August 17, 2000	Revisions: (1) The Purpose section was revised to strengthen language emphasizing that perpetrators will be held accountable for committing acts of violence as outlined in the policy. (2) Added Domestic Violence in the Definitions section. (3) Included in the Prohibited Actions and Sanctions section language stating that an act of off-duty violent conduct can be considered grounds for disciplinary action. The agency must demonstrate that action taken is supported by the existence of a rational nexus between the conduct committed and the potential adverse impact on a State employee's ability to perform the assigned duties and responsibilities. (4) Changed the language in the Advisory Note in the Prohibited Actions and Sanctions section regarding a referral to the State Employees' Assistance Program. The advisory note states that when management determines that a potential for violence exists, an employee may be required to undergo an assessment to determine the risk of danger. The terminology used for the assessment process is called risk assessment. (5) A new section entitled Support and Protections was added stating that agencies shall make reasonable efforts to protect and support victims of workplace violence including domestic violence. (6) This policy also included in the Agency/University Responsibilities section that provisions shall be made for

Workplace Violence Policy

	supervisors and managers to be trained in issues of workplace violence to foster a safe and healthy work environment.
April 1, 2008	• Update to omit reference to State Employees' Assistance Program. • Added definitions of "Bullying" and "Stalking."
February 6, 2020	• Adds new summary policy statement. Adds language to existing definitions and adds new definitions. Adds list of examples of prohibited conduct that would be considered workplace violence. Denotes that management may recommend EAP services to support employees that are victims of workplace violence. Denotes that possession of weapon in federal, state, or local buildings may or may not be permitted dependent upon applicable statutes. Describes workplace violence incident reporting and response responsibilities of employee, supervisor, and agency.
October 13, 2022	• In Section 8.1, adds authorization for agency to provide leave with pay where it is necessary for transition to an adjustment under this Workplace Violence Policy to the employee's work schedule, location, or working conditions. • In Section 8.2, adds description of "Safe Days" by including the relevant material from the October 23, 2019 Executive Directive issued by Governor Cooper.

Worksite Wellness Policy

Contents:

§ 1. Purpose

The Worksite Wellness Policy provides the foundation for state entities to develop activities and modify work environments and policies to support the health and wellbeing of state employees. In addition to the benefits for employees, positive benefits are likely to accrue to families of employees, resulting in better health for families and the community.

§ 2. Policy

In partnership with the Office of State Human Resources (OSHR) and the NC Department of Health and Human Services' Division of Public Health (DPH), each agency head has the responsibility to create and participate in a Worksite Wellness program within his or her own agency or university. The Worksite Wellness initiatives shall address the primary components of a healthy lifestyle including healthy eating, physical activity, tobacco use cessation, and stress management. The State Health Plan for Teachers and State Employees (SHP) and DPH have developed a Worksite Wellness model to assist agencies in the establishment of their programs.

§ 3. Administration

OSHR and the DPH, with assistance from the Plan and other state government partners, will guide and assist agencies in the development of a comprehensive Worksite Wellness Program for State employees. The NC Health*Smart* Worksite Wellness Website, available at:

Worksite Wellness Policy (cont.)

https://shp.nctreasurer.com/HealthandWellness/worksite_wellness/Pages/default.aspx will serve as a resource for administering and implementing the program.

§ 4. Components

Wellness Leader: Each agency head shall designate a Wellness Leader at the management level who has direct access to the agency head. In collaboration with management and employees, this person is responsible for creating a Worksite Wellness infrastructure overseeing the development and implementation of employee wellness policies and committees, and providing ongoing assessment/monitoring of the effectiveness of Worksite Wellness Programs.

Advisory Note: Recommended criteria for agencies to use in selecting a Wellness Leader and a list of responsibilities for Wellness Leaders can be found at http://oshr.nc.gov/state-employeeresources/benefits/wellness/resources. Leaders are responsible for completing annual Worksite Wellness Policy surveys and promoting completion of annual wellness survey of wellness committees and employees.

Wellness Committees: Each agency shall establish a wellness committee infrastructure. A wellness committee is a team of employees that meet formally and have identified aims, goals, and implementation strategies to encourage healthy behaviors at the workplace, advocate for policy change, and create health-friendly work environments. A wellness committee should be comprised of employees who represent a cross section of the employee population. Multiple committees may be necessary depending on the size and number of locations of the agency.
Committee Chair(s) and Members Responsibilities: Committees should elect a wellness chair or co-chairs to conduct meetings and lead activities. Regarding time commitment, Committee members may need as much as four hours a month and the wellness chair(s) as much as six hours a month to plan and implement the agency's strategic wellness plan. (As appropriate, these activities should be included in an employee's work plan.)
For more information on establishing committees, organizations are encouraged to use the NC Health*Smart* Worksite Wellness Website found online at: https://shp.nctreasurer.com/HealthandWellness/worksite_wellness/Pages/default.aspx.

Worksite Wellness Policy (cont.)

§ 5. Policy Guidelines

§ 5.1. Creating an Employee Workplace Wellness Infrastructure

(1) Measurable Wellness Program Objectives: Objectives should be included in each agency's strategic plan and in employee work plans, as appropriate. Wellness leaders should ensure that an annual wellness plan with measurable objectives is developed by the wellness committee(s) and progress on meeting those objectives is monitored at least annually.

(2) Financial Resources for Wellness Activities: Worksite Wellness programs should utilize available resources within State government and gratis/discounted services from the private sector as available. In addition, State agencies and the legislature may provide fiscal support for wellness committees and activities. Wellness committees should be aware of State Ethics Commission guidelines at:
http://www.ethicscommission.nc.gov/library/pdfs/Laws/EO24.pdf
regarding employees in certain types of state positions receiving donated items. Some state agencies, due to the scope of their fiscal or judicial role, may not be able to solicit donations from the private sector. Donations or services should not be solicited or received from any entity that has a vendor, contractual, or pre-contractual relationship (bidding process) with a state agency/entity. Office of State Budget & Management (OSBM) approval will be needed by agencies to allocate funds for wellness programs. The State of North Carolina Budget Manual section 6.1.8 specifies current guidelines for use of lapsed salaries for wellness activities and specific guidelines for how to use said funds. The Budget Manual is available online at:
https://ncosbm.s3.amazonaws.com/s3fs-public/documents/files/BudgetManual.pdf

(3) Computer Access: State agencies, to the extent possible, should make computers and email accounts available to employees in order to facilitate health education, increased participation in employee wellness surveys, and access to Employee Assistance Programs, and Plan resources (i.e., NC HealthSmart Health Assessment tool).

(4) Communication and Promotion: State entities should promote, at all levels of the organization, their wellness initiatives as well as other resources such as the State Health Plan for Teachers and State Employees, NC HealthSmart services and benefit

Worksite Wellness Policy (cont.)

changes, Employee Assistance Programs, the NC Tobacco Use Quitline (Quitline NC), ergonomics programs, and other wellness-related programs available to employees. New State employees should receive information about the NC HealthSmart healthy living initiative and the agency's worksite wellness program during orientation.

(5) Quality and Accessibility: State entities should have a plan for routinely monitoring the quality of wellness programs provided and employee access to programs across all work sites. The Statewide Wellness Coordinator will be responsible for designing a standard evaluation plan and assisting with discussing findings with the agency wellness leadership and staff. This is to ensure all employees receive the same level of services and supervisory support. State entities should provide flexibility within current policy guidelines to allow for and support participation in wellness activities.

(6) Liability Issues: The agency shall address liability issues depending on the nature of the wellness activity. Worksite wellness activities usually occur outside of work hours, for example, before and after work or at lunch time. Participation in wellness activities is voluntary; and, therefore, the State is not liable for injuries sustained to employees during their participation in these activities. As a general reference, injury that occurs during non-pay status is not compensable. Non-pay status is defined as before work, after work and non-paid time during the normal workday. State entities should inform employees of the above information.

The agency's Safety Officer should be involved in the development of safety and maintenance guidelines for wellness areas to ensure that equipment and areas for wellness activities do not present hazardous conditions. It is recommended that any fitness equipment, new or used, with moveable parts be light commercial or commercial grade quality. Used equipment should be examined prior to use by a technician to ensure that it is functioning correctly. Routine maintenance of all equipment with moveable parts should be scheduled at least annually with a technician familiar with servicing fitness equipment.

(7) Sample Liability Release Forms and Signage Language: Liability release notification documents are available from the Office of State Human Resources at http://oshr.nc.gov/policies-forms/workplace-wellness/worksite-wellness. All employees shall be required to sign a "Wellness Activity Waiver Form" prior to participating in any worksite wellness activity/event that involves physical movement. This liability release

Worksite Wellness Policy (cont.)

form covers organized and individual wellness activities at the workplace as well as team or organized wellness events held off campus. Signed forms should be kept in personnel files. It is recommended that the liability release form be included in new employee orientation packets. Signs should be posted in exercise areas reminding employees that participation is at their own risk and that any unsafe conditions should be reported immediately to the designated agency contact. It is advised that directions for the safe use of equipment also be posted in the area.

§ 5.2. Supporting Employee Participation in Wellness Activities

(1) Incentives: Incentives are recognized as an important part of an integrated health promotion and wellness program to encourage and reward behavior change. The Office of Management and Budget Manual stipulates specific guidelines related to fiscal support of wellness activities annually.

(2) Prizes: Drawings for prizes can be used to reward participation in wellness activities. Items offered as donations from either internal or external sources should comply with agency and State Ethics Commission guidelines.

Employees should be made aware of their IRS tax liability for any incentive and possibly for incentive items of significant value such as a gym membership received as a raffle prize. Incentive items of small value that are given infrequently are usually exempt.

(3) Fundraising: Wellness Committees throughout State government have permission to hold fund raising activities and solicit donations from vendors to support employee wellness programs that comply with State Ethics Commission guidelines. It is recommended that organizations establish an internal approval process or define guidelines for approved types of fundraising activities. Raffles should be limited to no more than two per year for each agency or university wellness committee.

(4) Wellness Program Fees: Wellness committees may charge employees to cover costs associated with providing wellness classes or programs. Wellness Committees charging employees for classes and program costs may, in addition to covering program costs, charge an additional amount that is refunded to participants upon completion of a program. In those situations, it is advised that wellness committees have participants sign a consent form outlining the requirements and procedures for obtaining a refund of

Worksite Wellness Policy (cont.)

any money paid. Any money should be handled by utilizing the agency's fiscal policies and in accordance with OSMB policy.

(5) Wellness Related Services Contributions: Contribution of services of value such as health related screenings should comply with current State Ethics Commission guidelines and be reviewed by the agency director and/or agency legal counsel prior to accepting these services.

(6) Wellness-related Vendors: State policy allows service providers, such as a weight management program, to offer programs to employees at the worksite during nonwork hours, i.e. during lunch hours, or before or after the official workday of the employee, with the permission of the agency head or designee. Wellness Programs should ensure that vendors providing wellness programs or services to employees have the recognized qualifications to provide such programs.

See:
https://shp.nctreasurer.com/HealthandWellness/worksite_wellness/Pages/default.asp x
for guidance on selecting qualified vendors and responding to vendor solicitations. Wellness committees using funds from fund raising efforts or participant receipts are not required to use the state bid or contractual process in the selection of wellness vendors providing occasional wellness programs or activities for employees. State employees paid directly by other employees to provide occasional wellness classes during non-work hours are not considered as engaged in secondary employment. See:
http://www.oshr.nc.gov/Guide/Policies/manualindex.htm#s

§ 5.3. Increasing Employee Levels of Physical Activity in the Workplace

Activity Space: Designation of space for wellness activities, including exercise, in state owned and leased office space is permissible and encouraged.

Permission to use designated office space in leased or state owned property for a wellness or fitness area must be requested from the Office of State Property, Department of Administration (DOA). Current statutes do not address the use of office space for wellness activities. Empty office space may be used on a temporary basis without permission. Approval from DOA is not required to include fitness areas as part of multi-use space such as storage, workrooms, or break areas.

Worksite Wellness Policy (cont.)

§ 5.4. Improving Access to Healthier Food in the Workplace

(1) Vending and Food Service: State entities are encouraged to make available healthy snacks/foods at catered events, in vending machines, in cafeterias, and in snack bars. For example, provide at least 15 to 20 percent healthier snacks in machines. Clear identification of healthy snacks is strongly encouraged.

(2) Food Storage and Preparation: Environmental accommodations for food preparation and storage (e.g. sinks, refrigerators, microwaves) are encouraged to support employees in bringing healthy lunches and snacks to work.

(3) Voluntary Food and Beverages at work related events: Worksite Wellness Leaders should encourage its members to make every effort to offer healthy options at meetings and work related social gatherings if food and beverages are brought in by employees as a part of the event. “Guidelines for Healthy Foods and Beverages at Meetings, Gatherings, and Events” can be found at:
http://www.eatsmartmovemorenc.com/HealthyMeetingGuide/HealthyMeeting Guide.html

§ 5.5. Reducing and Managing Stress in the Work Place

(1) Stress Reduction and Management Training: Agencies should facilitate or provide stress reduction and management training annually to managers and supervisors to improve their supervisory skills and to reduce conflict and stress in the workplace. Training should also be offered to employees who want to improve their time management and stress reduction skills. Agency leadership should strongly encourage management and employees to take advantage of these resources. Wellness committees should include stress management programs as an ongoing component of their wellness program.

(2) Breaks and Lunch Time: State agencies are encouraged to ensure that employees are receiving time for lunch and for appropriate breaks from repetitive and stressful work functions during the workday to help prevent stress and injury.

§ 5.6. Supporting Tobacco Cessation

(1) State Laws Prohibiting Tobacco Use in Worksites: Ensuring employees understand and abide by these laws is an effective way to help those trying to quit tobacco use. Promoting cessation resources and offering cessation programs is highly recommended. Under NC General Statute law, smoking is currently prohibited in state government

Worksite Wellness Policy (cont.)

buildings; academic and medical facility campuses; state vehicles; schools; prisons; and long-term care facilities. The UNC system prohibits smoking within 100 linear feet of state owned or leased property. UNC Chapel Hill and East Carolina Medical centers prohibit smoking on all grounds Worksite Wellness and walkways. The law also requires the person in charge of buildings and grounds to post signs stating that smoking is prohibited.

(2) Tobacco Cessation Programs: Agencies and their Wellness Committees should routinely promote tobacco cessation resources and benefits available through Quitline NC, applicable Employee Assistance Programs (EAP), and the State Health Plan. For tobacco use cessation:

a) Quitline NC: 1-800-QUIT-NOW. (1-800-784-8669). Offers free and confidential support from trained quit coaches 24 hours per day- 7 days a week to all NC youth and adults who want to quit using tobacco.

b) State Health Plan for Teachers and State Employees' Benefits: Plan members are offered in-person counseling with a doctor or behavioral therapist. All tobacco cessation prescription medications are offered at a reduced cost. In addition, free nicotine replacement patches are available to members enrolled in the multi-call program with Quitline NC. Plan members who want more information on these and other tobacco cessation resources are encouraged to visit www.shpnc.org.

c) Employee Assistance Services (EAP): Most state agencies and universities provide EAP services for their employees and family members. Employees should contact their agency or university Human Resource Office to find out if EAP services are available.

§ 6. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4

It is compliant with the Administrative Code rules at:

- 25 NCAC 01N .0500

Worksite Wellness Policy (cont.)

§ 7. History of This Policy

Date	Version
February 1,2008	• New policy requiring all agencies to establish worksite wellness programs.
April 1, 2008	• Corrected the information about EAP services • Included information about smoking in State government buildings.
October 1, 2008	• Added several Advisory Notes for clarification.
July 1, 2010	• Requires that the Statewide Wellness Coordinator develop the program evaluation tool as opposed to each individual site wellness leader. • Requires that a Worksite Wellness Activity Liability form be completed by participants for each event/function that involves physical activity. • Adds the 2010 OMB's specific guidelines for the use of available lapsed salaries for wellness activities. • Revises and adds additional guidance related to the solicitation and or acceptance of donated items; monies; or services of value to the wellness program as it relates to current ethics policy; statutes; and executive orders. • Encourages employees to bring healthy food and drink options to social gatherings or meetings where employees voluntarily bring food and drink to share such as employee birthday celebrations; holiday potluck lunch; etc. • General editing of the smoking cessation and related law section.
March 1, 2014	• Correction of website links. Corrections made to the Section on Supporting Tobacco Cessation to match the State Health Plan cessation benefits.
August 12, 2016	•

Vaccination Incentive Pilot Program

Contents:

§ 1. Introduction and Purpose

This pilot policy allows the Division of Adult Correction and Juvenile Justice in the Department of Public Safety to offer an incentive pay program for employees who already are, or become, vaccinated against COVID-19. COVID-19 is an urgent and serious danger to the health of North Carolinians, including the people who work in, live in, or visit state correctional facilities. As of October 5, 2021:

- COVID-19 has infected more than 1.4 million people in North Carolina, which is more than 13% of the state's population.
- The disease has killed at least 16,812 people in North Carolina.
- More than 2,700 people are hospitalized with COVID-19.[1]

[1] N.C. Department of Health & Human Services, *COVID-19 North Carolina Dashboard*, covid19.ncdhhs.gov/dashboard and covid19.ncdhhs.gov/dashboard/data-behind-dashboards.

Vaccination Incentive Pilot Program (cont.)

The Division of Adult Correction and Juvenile Justice performs an essential and unique role in state government. The Division's employees who work in congregate living facilities are usually in close quarters with large groups of people. The Division's security requirements make close contact unavoidable. From the start of the pandemic, the Division's employees have stayed on the job through difficult conditions, adjusting to restrictions and changes. Because the Division's jobs are so important to public safety, and because the consequences are so great if Division employees are unable to work, the Division has expressed interest in offering a bonus to employees who become vaccinated.

Although COVID-19 represents a severe threat to the unvaccinated, people who are Fully Vaccinated have a reduced chance of being infected.[2] Further, being Fully Vaccinated greatly reduces the risk that anyone who does contract COVID-19 becomes severely ill, requires hospitalization, or dies.[3]

If state government employees are Fully Vaccinated:

- They are less likely to be infected by COVID-19,
- They are less likely to have to spend substantial time away from work because of being infected,
- They are less likely to spread COVID-19 to the people they contact, and
- They are less likely to require costly hospitalization for COVID-19.

Therefore, this policy establishes a program under which the Division, at its option and if funds are available, may offer a $250 Vaccination Bonus to certain employees, under the terms stated below. This Vaccination Bonus is available to eligible employees who choose to get vaccinated now, as well as eligible employees who already have been vaccinated.

[2] N.C. Department of Health & Human Services, *Respiratory Surveillance: September 19 – September 25, 2021, Updated September 30, 2021*, https://covid19.ncdhhs.gov/media/380/open, page 13. This report states that in North Carolina in late September 2021, "unvaccinated individuals [were] … 437% more likely to get COVID-19" compared to vaccinated individuals.

[3] N.C. Department of Health & Human Services, *Respiratory Surveillance: September 19 – September 25, 2021, Updated September 30, 2021*, https://covid19.ncdhhs.gov/media/380/open, page 14. This report states that in North Carolina in late September 2021, "unvaccinated individuals were … 1,627% more likely to die of COVID-19" compared to vaccinated individuals.

Vaccination Incentive Pilot Program (cont.)

§ 2. Definitions

For purposes of this policy, the terms below mean the following:

COVID-19: Coronavirus Disease 2019, including its variants.

Designated Person: A person designated by Human Resources to collect documents under this Policy, treat them confidentially, provide them to Human Resources, and (if applicable) return them to the employee.

Division: The Division of Adult Correction and Juvenile Justice at the Department of Public Safety.

Fully Vaccinated: means that it has been at least two weeks after someone has received the second dose in a two-dose COVID-19 vaccine series (Pfizer or Moderna), or that it has been two weeks after someone has received a single-dose COVID-19 vaccine (Johnson & Johnson).[4]

Participating Agency: The Department of Public Safety.

Vaccination Bonus: A bonus provided under the terms of this policy.

§ 3. Policy

§ 3.1. Employees Eligible for a Vaccination Bonus

Employees in the following positions are eligible to receive a Vaccination Bonus under the terms of this Policy:

- Positions that, as of October 7, 2021, were at the Department of Public Safety and had their duty station at a correctional facility, residential program, residential treatment facility, transitional house, or group home operated by the Division of Adult Correction and Juvenile Justice.

Only employees in positions described above are eligible for a Vaccination Bonus.

The Vaccination Bonus is available to new or existing employees in permanent, probationary, time-limited, and temporary positions. Both full-time and part-time employees are eligible. The Vaccination Bonus will not be prorated for part-time employees.

[4] In addition, the following people who have taken other vaccines count as "Fully Vaccinated":

- Participants in the Novavax trial who are two weeks after having received both doses.
- For any other COVID-19 vaccine that is listed for emergency use by the World Health Organization, people who have received all recommended doses, after any waiting period recommended for the doses to take full effect.

See the note in § 3.3 below concerning booster shots.

Vaccination Incentive Pilot Program (cont.)

Temporary employees are eligible only if they meet the conditions listed in § 3.3 below.

§ 3.2. Amount of Vaccination Bonus

Eligible employees will receive Vaccination Bonuses in the following amounts after taking the actions listed below. Bonuses are available both for vaccination shots taken before this policy was issued and for vaccination shots taken after this policy was issued.

- $125 after the employee provides documentation that the employee has received the first dose in a two-dose COVID-19 vaccine series (such as Pfizer or Moderna), and an additional $125 after the second dose.
- $250 after the employee provides documentation that the employee has received a single-dose COVID-19 vaccine (Johnson & Johnson).
- For vaccines other than Pfizer, Moderna, or Johnson & Johnson, $250 after the employee provides documentation that the employee has received the last dose required to make them Fully Vaccinated.

Note: People who are authorized for additional vaccination doses (so-called "booster shots") do not need to have taken those doses to receive a Vaccination Bonus under this policy. No additional bonus will be provided for people who take a booster shot.

Under this policy, employees can receive bonuses only for the doses from one COVID-19 vaccine. For example, someone who has received Pfizer doses is not eligible for an additional set of bonuses for Moderna or Johnson & Johnson doses.

§ 3.3. For Temporary Employees

Temporary employees qualify for a Vaccination Bonus if, at any time during the period this policy is in effect for the Division, those employees:

a. Either work (1) directly for the Division of Adult Correction and Juvenile Justice or (2) on an assignment at the Division through the Temporary Solutions Program at the Office of State Human Resources; and
b. Regularly work at least 20 hours per week on-site and in-person at a correctional facility, residential program, residential treatment facility, transitional house, or group home operated by the Division of Adult Correction and Juvenile Justice; and
c. Meet all the other requirements of this policy.

Vaccination Incentive Pilot Program (cont.)

The amount of the Vaccination Bonus will be the same for temporary employees as for a permanent, probationary, or time-limited employee working the same schedule.

§ 3.4. Vaccination Documentation

The Participating Agency shall establish a procedure for the employee to provide vaccination documentation to Human Resources staff or a Designated Person. Any vaccination documentation shall be reviewed for validity by Human Resources and shall be kept confidential as required below. The employee is eligible for a Vaccination Bonus only if the vaccination documentation (a) is a valid document showing that the employee received a vaccination dose and (b) was provided by the employee to the appropriate person under the procedure established by the Participating Agency.

§ 3.5. Review of Vaccination Documentation by Human Resources

Authorized Human Resources staff must review vaccination documentation in good faith to determine whether it appears to be valid.

- Under this policy, no additional research is required by the Human Resources staff member to determine whether the information provided by the employee is truthful and accurate.
- However, the Human Resources staff member is authorized to require additional verification if the staff member has a reasonable basis to suspect that the information provided is inauthentic or fraudulent.

If vaccination documentation has already been reviewed under the policy entitled "Requirements for COVID-19 Testing and Face Coverings as an Alternative to Proof of Full Vaccination," the previous review of the vaccination documentation is sufficient and does not need to be performed again under this policy.

§ 3.6. Confidentiality of Vaccination Documentation

If any vaccination documentation is stored:

- Each staff member who receives those records must store them only in an agency confidential health information file that is maintained in accordance with any applicable State Records Center retention schedule.

Vaccination Incentive Pilot Program (cont.)

- This file (including any database containing this information) must be separate from any employees' general personnel files and must be available only to Human Resources staff within the Participating Agency.
- Workers should not be asked to transmit these records through a system (like email) unless that system is encrypted or otherwise secured with limited access.

Managers and supervisors shall not have direct access to vaccination status unless they are Designated Persons (as that term is defined above).

§ 4. Duration of Program

§ 4.1. Start Date

The Participating Agency shall specify the start date when the Vaccination Bonus program will become available. That start date shall be included in the Participating Agency's announcements to employees introducing the Vaccination Bonus program.

Employees are not eligible for a Vaccination Bonus if their employment with the Participating Agency ended before the start date that the agency announced for its Vaccination Bonus program.

§ 4.2. End Date

The Participating Agency may discontinue its Vaccination Bonus program at any time and for any reason, in its discretion. Unless terminated earlier, Vaccination Bonus programs will automatically end on April 30, 2022. Vaccination documentation provided after that date will not result in a Vaccination Bonus unless this policy is amended.

Employees are not eligible for a Vaccination Bonus if they submitted vaccination documentation (a) after the termination of their employment or (b) after the end date for the Participating Agency's Vaccination Bonus program.

§ 4.3. Availability of Funds; Approval of OSBM

Any Vaccination Bonus under this policy is subject to the availability of funds to the Participating Agency. If the Participating Agency does not have funds available, qualifying employees will not receive a Vaccination Bonus.

Before an agency offers a Vaccination Bonus under this policy, the Office of State Budget & Management (OSBM) must review the agency's proposed source of funds and

Vaccination Incentive Pilot Program (cont.)

approve that, at the time of review, funds are available in the amount required for the proposed bonuses.

§ 4.4. Approval of OSHR for Larger Vaccination Bonuses

With the pre-approval of the Director of the Office of State Human Resources (OSHR) and OSBM, the Participating Agency may offer Vaccination Bonuses under this policy greater than the $250 amount listed above. However, Vaccination Bonuses may not exceed $500 total per person.

§ 4.5. Reporting to OSHR

When the Participating Agency announces a Vaccination Bonus program to eligible employees, an informational report must be provided to the Chief Deputy Director at OSHR. In addition, the Participating Agency shall report Vaccination Bonus activities to OSHR on November 1, 2021; February 1, 2022; May 1, 2022; and August 1, 2022.

§ 4.6. Timing of Bonus Payments

The Participating Agency will make their best efforts to provide Vaccination Bonuses to qualifying employees as soon as possible. Employees are not entitled to any interest over the time between when they qualified for a Vaccination Bonus and when they received the Vaccination Bonus.

§ 4.7. Other Agencies

With State Human Resources Commission approval, other agencies or divisions may be added to this pilot policy in the future, based upon (a) the nature of the agency and covered employees' work (including but not limited to considerations of public safety, level of contact between people in the workplace, and interactions with vulnerable populations) and (b) the availability of funds to that agency.

§ 5. Miscellaneous Terms

§ 5.1. Relationship to Other Pay Programs and Human Resources Policies

Vaccination Bonuses are not included in base pay and are not counted in salary calculations for other compensation programs under State Human Resources Commission

Vaccination Incentive Pilot Program (cont.)

policies, including without limitation longevity pay, legislative pay increases, sign-on bonuses, or monetary payouts for leave.

Like salary, Vaccination Bonuses are taxable, and employees who are members of the Teachers & State Employees' Retirement System will be required to contribute six percent of a Vaccination Bonus as an employee contribution toward retirement. The Vaccination Bonus amounts listed in this policy are gross compensation, and they are **not** net of taxes or any retirement contributions.

Vaccination Bonuses are available to employees who are on leave with pay but are not available to employees who are not on a status that involves being paid by the Participating Agency.

§ 5.2. Contractors

This policy provides for bonuses only to employees of the Participating Agency, not contractors.

§ 5.3. Employees Exempt from the State Human Resources Act

Unless the Participating Agency states otherwise in its message to employees, bonuses under this policy will be provided in the same way regardless of whether employees are subject to or exempt from the State Human Resources Act.

§ 6. Savings Clause

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

§ 7. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(2) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish policies governing "[c]ompensation plans."
- N.C.G.S. § 126-4(4) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish "[r]ecruitment programs designed to

Vaccination Incentive Pilot Program (cont.)

promote public employment, … attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions."

- N.C.G.S. § 126-4(5) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish policies governing leave "and other matters pertaining to the conditions of employment."
- N.C.G.S. § 126-4(10) authorizes the State Human Resources Commission, subject to the approval of the Governor, to establish "[p]rograms of employee assistance, … safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration."

§ 8. History of This Policy

Date	Version
October 7, 2021	First version