Temporary Employment Policy

Contents:

§ 1. Policy

It is the policy of the Office of State Human Resources (OSHR) to establish and utilize temporary employees to fill a workforce need for a limited period. Temporary employees, while not to be used to permanently expand the workforce beyond authorized levels, can provide valuable services in times of need. OSHR has the responsibility to monitor and ensure compliance with policy. Therefore, under no circumstances shall an individual be utilized as a temporary employee outside of all applicable rules, statutes, laws, and guidelines, such as Chapter 126 of the NC General Statutes, 25 NCAC 01C .0405, the mandatory separation requirement, and the Affordable Care Act. This applies to all temporary employees, including those hired through Temporary Solutions, directly through a State agency, and through an approved third-party vendor.

Temporary Employment Policy (cont.)

§ 2. Opportunities to Transition to a Permanent Role

Temporary state employees perform many of the same duties as permanent state employees and often gain valuable work experience that may help them qualify for permanent state employment. Temporary employees are encouraged to apply for permanent state government positions that align with their qualifications and interests. Permanent job opportunities are publicly posted on the state's job opportunities website.

OSHR and many individual state agencies offer programs and services to help job seekers, including temporary employees, search and apply for permanent state positions. State agencies are encouraged to make permanent jobs more accessible to temporary state employees by considering their applications for permanent positions posted internally and hiring eligible temporaries directly into permanent positions under N.C.G.S. § 126-6.4.

§ 3. Determining Employee vs. Independent Contractor

Generally, a temporary state employee is any worker in a temporary position whose income taxes, Social Security taxes, and Medicare taxes are withheld by the State of North Carolina and receives a W-2. Temporary employees differ from independent contractors, who are self-employed and receive a Form 1099.

§ 3.1. Agency Must Correctly Classify Its Temporary Employees

When considering a short-term workforce need, agencies must determine the details of the proposed working relationship between the agency and the worker to help ensure that the worker is correctly classified as an employee or independent contractor for employment tax obligation purposes. This will also determine whether this policy applies to that worker.

§ 3.2. IRS Three-Factor Test[1] - Employee or Independent Contractor

Whether a worker is an employee or independent contractor depends on the relationship between the worker and the business. Generally, there are three factors to consider:

[1] From U.S. Internal Revenue Service, "Independent Contractor (Self-Employed) or Employee?" (Nov. 9, 2023), available at https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee.

Temporary Employment Policy (cont.)

- Behavioral control − Does the company control or have the right to control what the worker does and how the worker does the job?
- Financial control − Does the business direct or control the financial and business aspects of the worker's job? Are the business aspects of the worker's job controlled by the payer? Things like how the worker is paid, are expenses reimbursed, who provides tools/supplies, etc. should be considered.
- Relationship of the parties − Are there employee type benefits such as pension plan, insurance, and vacation pay? Will the relationship continue and is the work performed a key aspect of the business?

If the answers to these questions are generally yes, the worker is more likely an employee than an independent contractor.

§ 4. When a Temporary is Considered to be Employed

For the purpose of counting days and months in this policy, a temporary employee is considered employed:

- During any period in which they are not separated in the Integrated HR-Payroll System or other approved state payroll system, or
- From the first day of work for pay through the last day of work for pay, if not paid in the Integrated HR-Payroll System or other approved state payroll system, including but not limited to being hired through a private staffing firm or paid through an imprest system.

§ 5. Methods of Employing Temporaries

§ 5.1. Through Temporary Solutions

Temporary Solutions provides another state agency or university (the “employing agency”) with recruitment, placement, onboarding, timekeeping, and payroll services for a small administrative charge. The employing agency is the employer of record for temporaries employed through Temporary Solutions. This means that the employing agency determines the temporary’s job duties and work schedule, conducts interviews, conducts background checks (when necessary), decides who to hire, approves the hourly rate, supervises the temporary employee, approves their timesheet(s), and makes decisions regarding their employment. The employing agency is responsible for ensuring agency

Temporary Employment Policy (cont.)

compliance with all laws, rules, policies, and guidelines related to employing temporary workers.

§ 5.2. Direct Employment

Cabinet agencies with an approved exception to not use Temporary Solutions and Council of State agencies may employ temporary employees directly in the Integrated HR-Payroll System or other authorized payroll system.

§ 5.3. Private Staffing Firms or Any Other Method Used to Fill a Workforce Need for a Limited Period of Time

When authorized according to their internal procurement requirements, Cabinet agencies with an approved exception to not use Temporary Solutions and Council of State agencies may employ temporary workers through a private staffing firm or any other method used to fill a workforce need for a limited period of time, such as through an imprest system.

A state agency employing one or more temporaries though a private staffing firm or any other method used to fill a workforce need for a limited period of time shall ensure that the state agency shall contractually and operationally adhere to all applicable laws, rules, policies, and guidelines related to the employment of temporaries prior to the temporary staffer beginning work. Cabinet agencies that do not adhere to these requirements may have their approved exception revoked by the Office of State Human Resources.

§ 6. Responsibilities Regarding Temporary Employment

§ 6.1. Temporary Solutions

As part of the administrative charge applied by Temporary Solutions to the employing agency, Temporary Solutions is the employment service administrator which:

- recruits job candidates;
- advertises vacant temporary positions;
- screens applicants;
- provides qualified candidate(s) for temporary positions;

Temporary Employment Policy (cont.)

- onboards temporary employees for payroll, including processing Federal Form I-9 and E-Verify;
- enters time when requested and audits time entries;
- troubleshoots payroll issues;
- identifies and notifies workers employed through Temporary Solutions who qualify for the High Deductible Health Plan;
- monitors Agency compliance with applicable laws, rules, policies and guidelines, such as the mandatory break-in-service requirement;
- corresponds with the state's third-party unemployment insurance vendor regarding claims submitted by workers who were employed through Temporary Solutions.

§ 6.2. OSHR

OSHR serves as the policy administrator and as a part of that role:

- Maintains a list of approved third-party vendors for each State agency;
- Reports biannually to the Joint Legislative Oversight Committee and Fiscal Research Division on Agency compliance with applicable laws, rules, policies, and guidelines;
- Reviews and makes decisions on exception requests from State agencies.

§ 6.3. Agency

Each State agency is the employer of record for any temporary worker hired and paid through Temporary Solutions, or directly by the Agency, or through a third-party staffing service. It is responsible for ensuring Agency compliance with all laws, rules, policies, and guidelines related to employing temporary workers. As the employer, the Agency is also responsible for making employment decisions such as who and when to hire and separate a temporary, the hourly rate of pay, work schedule, length of assignment, workplace rules, required equipment, and required or recommended training. The employing agency is responsible for any damages, penalties, or remedies that are a result of the employing agency's conduct.

Agencies using Temporary Solutions shall provide current contact information for each temporary employee's supervisor as well as the agency HR contact and billing contact.

Temporary Employment Policy (cont.)

For agencies using Temporary Solutions, the temporary is not authorized to begin work until notified to do so by Temporary Solutions to help ensure timely payroll processing.

The Agency shall ensure any substantial changes in the duties and assignments of the temporary worker are communicated to Temporary Solutions. The Agency must review and approve any changes in the status or pay rate in advance of its effective date.

§ 7. Temporary Employees Ineligible for Benefits

Temporary employees do not:

- Earn leave, including sick leave and vacation leave
- Receive total state service credit
- Earn retirement credit
- Earn career status

Additionally, temporary employees are ineligible for the following:

- Severance pay
- Priority reemployment consideration
- Promotional priority

Temporary employees are not allowed to utilize the state grievance process and may be separated from employment at any time during their temporary assignment.

Temporary employees may be eligible for certain across-the-board pay increases or incentive payments depending on the funding stream of the employing agency. Any increases or incentive payments are in the discretion of the employing agency and are not automatic. For additional information, consult the agency HR staff.

§ 8. Mandatory Separation Requirement

N.C.G.S. § 126-6.3(a1) prohibits any temporary employee from working longer than 11 consecutive months without an approved exception. This is called the Mandatory Separation Requirement.

The Mandatory Separation Requirement applies to—and defines “temporary employee” as—any “State employee who is employed in a temporary appointment for a limited term, including a State employee hired from the OSHR Temporary Solutions

Temporary Employment Policy (cont.)

Program, directly hired by an agency, hired by an agency from a private staffing firm, or hired by any other method used to fill a workforce need for a limited period of time."[2]

Note: Individuals may be covered by the definition of "temporary employee" in the Mandatory Separation Requirement statute even if they might not be classified as temporary employees of the State under other laws or regulations.

When the 11-month limit is reached, the temporary employee shall stop working and be unemployed from that and any temporary assignment within state government for at least 31 consecutive calendar days.

§ 8.1. Exceptions to the Mandatory Separation Requirement

Exceptions to the Mandatory Separation Requirement shall be created and applied in accordance with N.C.G.S. § 126-6.3(a3)(2) and (3). Unless listed in Table 1 below, exceptions to allow a temporary employee to work beyond 11 months must be approved by the Director of OSHR. The exception request must meet both of the following requirements:

- The exception is in the best interests of the State because removing the employee from the job assignment will cause severe harm to the agency's ability to provide vital services to the public.
- The exception will not result in extending the 11-month maximum length of temporary employment beyond 22 months from the employee's initial hire date.

§ 8.2. Verification of Exception Status

Exceptions covered under N.C.G.S. § 126-6.3(a3)(2) shall be verified by an authorized HR Representative before the employee is considered exempt from the 11-month limit. Supporting documentation shall be retained in the employee's personnel file.

Table 1: Verification and Duration of Exceptions Covered Under N.C.G.S. § 126-6.3(a3)(2)

Exception Reason	Verification Method	Exception Begins	Exception Ends
Retired	Employee provides a written statement stating that they are receiving a	When the written statement is received	Separation, or when the employee becomes ineligible

[2] N.C.G.S. § 126-6.3(c)(7).

Temporary Employment Policy (cont.)

	retirement income and that they are not available for or seeking permanent employment with the state	by the HR Representative	based on the statutory requirements for exemption status as a retiree
Full-Time Student	Employee provides a course schedule from an academic institution showing enrollment of at least 12 credit hours for undergraduates or nine hours for graduate students	When the course schedule is received and validated by the HR Representative	Separation, or at the end of the quarter or semester that the employee is a full-time student[3]
Intern	Employee provides proof of enrollment as a student for a period of at least one academic semester	Date determined by the sponsoring agency that is within the period that the employee has exemption status as an intern	Separation, or when the employee is no longer enrolled as a student or when the internship ends, whichever comes first[4]
Extern	Sponsoring agency and academic institution enter into a written agreement which includes identifying the employee as a student earning course credit through the externship	Date established in the executed written agreement	Separation, or when the employee is no longer enrolled as a student or when the externship ends, whichever comes first
Inmate	Confirmation by NC DAC	Date that the employee's status is verified	Separation, or when the employee is no longer on a work-release program

§ 8.3. End of Exception Status After 11 Consecutive Months

If an employee has been employed for at least 11 consecutive months under an approved exception and the exception ends, the temporary shall stop working immediately and become unemployed as a temporary in state government for at least 31 consecutive calendar days.

[3] A full-time student who completed the spring semester (or quarter) and is enrolled as a full-time student for the fall semester (or quarter) is eligible for an exception as a full-time student during the summer regardless of whether they are taking classes during the summer.

[4] A student who completed the spring semester or is enrolled as a student for the fall semester is eligible for an exception as an intern during the summer regardless of whether they are taking classes during the summer.

Temporary Employment 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(19), 126-6.3

It is compliant with the Administrative Code rules at:

- 25 NCAC 01C .0405

§ 10. History

Date	Version
October 2016	• With the authority granted by 2013 NC Executive Order #4 “Temporary Employment Services” the Cabinet Agencies were required to utilize the NC Office of State Human Resources (OSHR), through Temporary Solutions to secure temporary employees. House Bill 97 further established that all State agencies which utilize temporary employees to perform work, excluding Information Technology related work, shall employ all temporary employees through OSHR, Temporary Solutions.
February 4, 2021	• Policy reviewed by Business Operations: Temporary Solutions Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies, including the Communicable Disease policy. This policy is being revised to update and clarify employment requirements for state government temporary positions and employees and format so consistent with policy review formatting.
September 18, 2025	Updated policy to reflect changes in law, more clearly describe Temporary Solutions operations, and discuss proper classification of temporary employees compared to independent contractors. Details follow. • Removed former Section 2, on the use of short-term IT staffing through DIT, since this material is better covered in DIT procedures. IT staffing is subject to an exception

Temporary Employment Policy (cont.)

	from the Temporary Solutions statute. (See N.C.G.S. § 126-6.3(a), first sentence.) • Added a new Section 2, entitled "Opportunities to Transition to a Permanent Role," that highlights the opportunity for streamlined temp-to-perm hiring created by new N.C.G.S. § 126-6.4. This new statute became law on July 1, 2025, as part of Session Law 2025-34. • Added a new Section 3, entitled "Determining Employee vs. Independent Contractor" that provides a brief summary of the IRS three-factor test for whether someone is an employee or an independent contractor. • Added a new Section 4, entitled "When a Temporary is Considered to be Employed." The counting procedure is important for the 11-month limit established in N.C.G.S. § 126-6.3. • Added a new Section 5, entitled "Methods of Employing Temporaries," which expands and clarifies the discussion in the previous policy about covered agencies. • Updated and streamlined Section 6, on responsibilities. • Moved the text about temporary employees' ineligibility for benefits from the former Section 3, entitled "Covered Employees," to a new Section 7, entitled "Temporary Employees Ineligible for Benefits." • In the text renumbered as Section 8, expanded and clarified the text on the mandatory separation requirement. This requirement applies to temporary employees who work longer than 11 consecutive months without an exception. • Removed the section entitled "External Temporary Staffing Vendors," since the requirements stated in that section appear in the exception letter issued by OSHR under N.C.G.S. § 126-6.3(a3)(1).

Temporary Employment Policy (cont.)

	• Updated the sources of authority section to list N.C.G.S. § 126-4(19).