

## Separation

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### Separation

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### 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.")

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### Resignation

An employee may terminate services with the State by submitting a resignation to the appointing authority. Normally, it is expected that an employee will give at least two weeks' notice prior to the last day of work.

Unused vacation leave not to exceed 240 hours plus 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 within five years or it may be applied toward retirement if eligible to retire within five years.

Such separation is voluntary and creates no right of grievance or appeal.

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### 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 be considered when determining whether the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact his or her employer.

Unused vacation leave not to exceed 240 hours plus 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 within five years or it may be applied toward retirement if eligible to retire within five years.

Such separation is voluntary and creates no right of grievance or appeal.

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### Separation

An employee may be separated when the employee and agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's condition when:

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

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position's essential duties as set forth in the employee's job description or designated work schedule; or

- (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 of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, 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.

### Procedure

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.

It is advisable for the agency to send the "Pre Separation Letter" to the employee via certified mail.

2. "Letter of Separation"

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If the agency and employee are unable to agree on terms of continued employment or 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 is sent to the employee. The letter must include:

- a. Actual date of separation; and
- b. Specific reasons for separation; and
- c. Employee's right of appeal.

It is advisable for the agency to send the "Letter of Separation" to the employee via certified mail.

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.

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### Leave Payout Upon Separation

When an employee is separated for reasons other than a work related injury, unused vacation leave not to exceed 240 hours plus 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 within five years or it may be applied toward retirement if eligible to retire within five years.

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 bonus leave eligible for payout 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.
- (3) Payment of any unused bonus leave eligible for payout 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

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time any excess vacation leave over the 240-hour maximum 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 bonus leave eligible for payout already earned as of the date of injury.
- (2) Payment for unused vacation leave accumulated during the first 12 months of workers' compensation leave.
- (3) Payment of any unused bonus leave eligible for payout granted on or after the date of injury.

Payment shall not be made for unused sick leave; it shall be reinstated if the employee returns within five years or it may be applied toward retirement if eligible to retire within five years.

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### Grievance or Appeal of Separation

An employee may grieve or appeal separation. Such a separation shall not be considered a disciplinary dismissal as described in G.S. 126-34.02 or 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 G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden shall be to prove that the employee was unavailable, that efforts were undertaken to avoid separation, and why the efforts were unsuccessful.

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### Retirement

An employee may retire when the employee is eligible and applies for retirement benefits from the Teachers' and State Employees' Retirement System or the Law Enforcement Officers' Benefit and Retirement Fund.

Unused vacation, or any portion, may be exhausted and the remainder paid in a lump sum (not to exceed 240 hours) along with bonus leave. Unused sick leave may be applied toward retirement.

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## Separation (continued)

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### 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 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 within five years or it may be applied toward retirement if eligible to retire within five years.

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### Dismissal

Dismissal is involuntary separation for cause in accordance with the provisions of the policy on Disciplinary Action, Suspension, and Dismissal.

Unused vacation leave not to exceed 240 hours plus 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 within five years or it may be applied toward retirement if eligible to retire within five years.

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### 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 positions appointed by the Governor,
- policymaking positions,
- confidential assistants and secretaries, or
- chief deputy or chief administrative assistant.

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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 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 within five years or it may be applied toward retirement if eligible to retire within five years.

Advisory Note: The Employment Security Commission (ESC) has ruled that these employees are eligible for unemployment benefits. If the employee voluntarily resigns before the date the appointment ends, it will be called a "Resignation" and will be subject to ESC regulations dealing with voluntary separations.

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### Death

Payment for unpaid salary, unused vacation leave (not to exceed 240 hours plus unused bonus 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. Payment shall not be made for unused sick leave.

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### 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

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employee left for a higher salary, or other pertinent facts that led to the employee's decision to leave.

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