

STATUS REPORT

April 14, 2014

AGENCY: NC STATE HUMAN RESOURCES COMMISSION / OFFICE OF STATE
HUMAN RESOURCES

RULE CITATION: 25 NCAC – All Temporary Rules Filed In January 2014
25 NCAC 01J .1310 – Temporary Rule Filed In February 2014

At its January 31, 2014 meeting, the Rules Review Commission objected to all the temporary rules filed by the agency in accordance with G.S. 150B-21.1 and -21.9.

The Commission objected to these rules based on ambiguity. Based on the lack of proper formatting throughout these rules and their failure to comply with the Office of Administrative Hearings formatting requirements they are not suitable for inclusion in the NC Administrative Code at this time. At the same time there are discrepancies between filings that the agency has made and what they indicated they intended to file on a chart submitted with the filings. There is also a discrepancy in that the agency submitted filings of different versions of the same rule in a number of instances and it is unclear which version the agency intended to file. Based on all these problems the rules are deemed ambiguous and need necessary revisions.

At the present time the agency and counsel have finished their review of each of these rules and counsel has given the agency suggestions as to language that he would recommend the RRC approve. The agency intends to withdraw a number of the filed rules based on the fact that the changes in them are not necessitated by S.L. 2013-352 (HB 834). In addition it is likely that it will remove a number of changes proposed in other rules for the same reason – although it will go forward with other changes in those rules since they believe the changes are required by the recent legislation.

Finally the agency wishes to attempt to craft some language that might satisfy opponents of these rules. This language would address the authority of the agency to draft rules concerning what may be awarded or denied to parties as a result of grievances and other disputes and what the proper role for administrative law and other judges is in those situations. This likely would require receiving the approval of the State Human Resources Commission for this approach.

That last situation also applies to Rule 01J .1310 which the Commission objected to based on ambiguity

Joseph J DeLuca,
Commission Counsel

Deluca, Joe

From: Bateman, Valerie
Sent: Monday, April 14, 2014 10:43 AM
To: Deluca, Joe
Cc: Downing, Benjamin
Subject: Re: Status

We are taking 2 rules back to SHRC this week. Then we expect that those rules and all if the other rules that are still pending would go before the RRC in May.

On Apr 14, 2014, at 9:41 AM, "Deluca, Joe" <joe.deluca@oah.nc.gov> wrote:

Could one of you please confirm that you will not be filing any rewritten rules for neither the single temporary rule 01J .1310 filed in March nor the entire set of temporary rules filed for January review. As I understand it you intend to present revisions for these rules to the SHRC at its meeting this week for presentation to the RRC in May.

If this is not correct please let me know the status and your expectations.

Joe DeLuca
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