

May 1, 2014

MEMORANDUM

TO: Molly Masich, Codifier of the Rules
Office of Administrative Hearings

FROM: Shari G. Howard, Rules Coordinator
Office of State Human Resources

RE: Official Notice of Withdrawal of Filed Rules

The purpose of this memorandum is to notify you the Office of State Human Resources has decided to withdraw the following rules that were filed in October 2013:

25 NCAC 01H.1003
25 NCAC 01H.1004
25 NCAC 01H.1005
25 NCAC 01I.2002
25 NCAC 01J.0615
25 NCAC 01J.0616

Please contact me if you have any questions.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Human Resources Commission	
2. RULE CITATION & NAME: 25 NCAC 01J .1303 AGENCY AND UNIVERSITY GRIEVANCE REPORTS AND DATA ENTRY	
3. Action:	<input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule:	<input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable:	
a. Proposed Temporary Rule submitted to OAH: 10/25/2013	
b. Proposed Temporary Rule published on the OAH website: 11/4/2013	
c. Public Hearing date: 11/15/2013	
d. Comment Period: 10/26/2013 - 11/26/2013	
e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/25/2013	
f. Adoption by agency on: 12/13/2013	
g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 28, 2014	
h. Rule approved by RRC as a permanent rule:	

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: HB 834 [Session Law 2013-382]
Effective date: 08/21/2013
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

Explain: The State Human Resources Act was amended to change the grievance and contested case provisions formerly in effect, and changed effective August 21, 2013. This rule is being adopted to replace a repealed rule elsewhere and to reflect the change in the statute. This chapter is being reorganized to include all rules on the employee appeals and grievance process and most of the rules from Sub-sub chapter .1200 and from Subchapter 1B are being adopted here but are virtually the same rules that have appeared elsewhere in Title 25. The need for certainty in the grievance process and organization in the rules justifies an abbreviated notice and hearing process.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required? See response to number 6 above and the following:

(1) Efficient, effective, and legally sound functioning of State government required and dependent upon a viable set of human resources policies and procedures to provide a uniform and fair **process** for the accomplishing of basic, day to day employment actions within the Cabinet and Council of State Agencies. A huge percent of the State's budget is spent on managing the human resources of the State-those State employees which perform the work of the cabinet and council of State agencies.

(2) Without human resources policies, in the form of either emergency or temporary rules, in place, State government may face legal challenges to attempts to enforce the changes in human resources actions related to the changes in the law made in HB 834. The inability to process employee relations actions and to provide required due process procedures required by the change in the law will result in State government slowing down dramatically and in possible additional legal challenges to employment actions taken by the State.

(3) In addition, the public health and safety of the State could be affected if those agencies whose mission and actions affect public health and safety if they are unable to enforce and implement employment decisions because of opposition and a refusal to comply with the proposed rules implementing the changes in the law.

(4) In addition, other minor changes in a few of the rules being proposed are so closely related to the proper functioning of the entire employee relations component being changed as a result of HB 834 that these changes are also necessary in order to have a functioning system of human resources while the permanent rulemaking process proceeds.

(5) If the State Human Resources Commission/Office of State Human Resources are not permitted to enforce the changes in the law, made effective August 21, 2013, then agencies will be caught between a law that has changed and rules that are inconsistent with the law for several months. This is an untenable situation which would create chaos within State government because it would derail the day to day processing of human resources grievances and provide a complete lack of process, given that the old process is not consistent with the law, and the new process is not yet in effect.

(6) This rule defines and limits the conditions under which attorney's fees can be awarded as in a previous rule (q.v. 25NCAC 01J .1305). This rule is in the interest of controlling contested case-related expenses, is therefore in the public interest, and should not be subject to notice and hearing requirements.

(7) It should be noted that the policies adopted by the State Human Resources Commission are arguably not even subject to the rule-making process under G.S. 150B-2(8a)(a). Under (8a), "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term specifically does not include the following: "statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 [Office of the Governor and Lieutenant Governor council of State agencies and departments] or 143B-6 [cabinet agencies], including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies." Because these policies affects only the procedural and substantive rights or duties of a person employed by these agencies, the policies adopted by the State Human Resources Commission are not required to adopted as "rules" under G.S. 150B-2(8a). Furthermore, an exclusion of human resources policies from the rulemaking process is consistent with the General Assembly's specific exclusion of budget processes used to manage the internal working of State government from rulemaking. Because the Commission has chosen to engage in the rulemaking process, it should not be assumed it is the Commission's position that it is required to engage in the rulemaking process.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Shari Howard

Phone: 919-807-4881

E-Mail: shari.g.howard@nc.gov

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Susan Manning

Title: Chair, State Human Resources Commission

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

1 CHAPTER 01 – OFFICE OF STATE PERSONNEL HUMAN RESOURCES

2
3 SUBCHAPTER 1B – STATE PERSONNEL HUMAN RESOURCES COMMISSION
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6 25 NCAC 01B .0350 is amended under temporary procedures as originally published on the OAH website on
7 October 28, 2013, with changes as follows:
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9 **25 NCAC 01B .0350 TIME FRAME FOR RAISING ALLEGATION OF DISCRIMINATION**

10 For cases arising before ~~January 1, 2012~~, August 21, 2013, allegations ~~Allegations~~ of discrimination based on
11 NCGS 126-16, 36, 36.1 must be raised within 30 days, either in a direct appeal to the ~~State Personnel Human~~
12 ~~Resources~~ ~~Commission~~ Office of Administrative Hearings or within the departmental grievance procedure, of the
13 date of the action that is alleged to be discriminatory. Failure to raise such an allegation within 30 days shall be
14 cause to have such allegation dismissed.

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16 *History Note:* Authority G.S. 126-4; 126-38; G.S. 126-34.01; 126-34.02.
17 Eff. February 1, 1985; February 1, 1985;
18 Temporary Amendment Eff. May 26, 2014.
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1 25 NCAC 01B .0413 is amended under temporary procedures as originally published on the OAH
2 website on October 28, 2013, **with changes** as follows:

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4 **25 NCAC 01B .0413 EXERCISE OF COMMISSION DISCRETION**
5 For cases arising before January 1, 2012, the ~~The State Personnel~~ Human Resources Commission **will** **shall** weigh
6 all relevant factors and circumstances in employee contested cases, including factors of mitigation and justification,
7 in making a decision in a contested case of whether disciplinary action was imposed for just cause.

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9 *History Note: Authority G.S. 126-4(9); 126-37;*
10 *Eff. August 1, 1980;*
11 *Amended Eff. ~~May 1, 1989.~~ May 1, 1989;*
12 *Temporary Amendment Eff. May 26, 2014.*
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1 25 NCAC 01B .0414 is adopted under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

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4 **25 NCAC 01B .0414 SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE AWARDED**

5 ~~Attorney's~~ For cases arising before ~~January 1, 2012,~~ August 21, 2013, attorney's fees may be awarded by the ~~State~~
6 ~~Personnel~~ Human Resources ~~Commission~~ only in the following situations:

- 7 (1) the grievant is reinstated in accordance with Rule .0428 of this Section;
- 8 (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether
9 the grievant has been reinstated;
- 10 (3) the grievant is determined, by the Commission or by the agency's internal grievance procedure, to
11 have been discriminated against or harassed in violation of G.S. 126-16 or G.S. 126-36;
- 12 (4) the grievant is awarded back pay as the result of a successful grievance alleging a violation of G.S.
13 126-7.1;
- 14 (5) the grievant is the prevailing party in a final appeal of a Commission decision; or
- 15 (6) any combination of the situations listed in this Rule.

16 Attorney's fees may be awarded when any of the above situations occur, either within the agency internal grievance
17 procedure, in an appeal to the State ~~Personnel~~ Human Resources Commission, or in an appeal of a
18 State ~~Personnel~~ Human Resources Commission decision.

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20 *History Note:* Authority G.S. 126-4(11); ~~126-7.1;~~
21 *Eff. September 1, 1987;*
22 *Amended Eff. March 1, 1996; July 1, 1989;*
23 *Temporary Amendment Eff. February 18, 1999;*
24 *Amended Eff. ~~August 1, 2000.~~ August 1, 2000;*
25 *Temporary Amendment Eff. May 26, 2014.*

1 25 NCAC 01B .0429 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

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25 NCAC 01B .0429 RECOMMENDATION OF DISCIPLINARY ACTION

For cases arising before January 1, 2012, ~~the~~The State ~~Personnel~~ Human Resources Commission shall have the authority to recommend to the respondent agency that disciplinary action be imposed on an employee who, as a result of any employee's failure to observe state policy and procedures in effecting disciplinary actions and ~~dismissals.~~ dismissals, fails to observe state policies and procedures.

*History Note: Authority G.S. 126-4(9);
Eff. ~~September 1, 1987.~~September 1, 1987;
Temporary Amendment Eff. May 26, 2014.*

1 25 NCAC 01B .0430 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

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25 NCAC 01B .0430 REMOVAL OF MATERIAL FROM PERSONNEL FILE

For cases arising before January 1, 2012, the ~~The State Personnel~~ Human Resources Commission shall ~~have the~~
~~authority to~~ order the removal of any material in a personnel file ~~which that~~ it finds to be inaccurate or misleading.

History Note: *Authority G.S. 126-4(9); G.S. 126-25 (prior to SL 2013-382);*
Eff. ~~September 1, 1987.~~ September 1, 1987;
Temporary Amendment Eff. May 26, 2014.

1 25 NCAC 01C .0202, as originally published on the OAH website on December 30, 2013, is proposed to be repealed
2 under temporary procedures as follows:

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4 **25 NCAC 01C .0202 EQUAL EMPLOYMENT OPPORTUNITY**

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6 *History Note: Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261,*
7 *March 24, 1972; S. L. 2013-382;*

8 *Eff. February 1, 1976;*

9 *Amended Eff. October 1, 2004; November 1, 1988; July 1, 1988; October 1, 1983;*

10 *December 1, 1978; ;*

11 *Temporary Repeal Eff. May 23, 2014.*

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1 25 NCAC 1C .0311 is adopted under temporary procedures, as originally published on the OAH website on October
2 28, 2013, **with changes** as follows:

3 **25 NCAC 1C .0311 ~~REMEDIES OF EMPLOYEES OBJECTING~~ EMPLOYEE OBJECTION TO**
4 **MATERIAL IN FILE**

5 ~~[(a) An employee, former employee, or applicant for employment who objects to material in the employee's file
6 may place in his or her file a written statement relating to the material he or she considers to be inaccurate or
7 misleading.~~

8 ~~(b) An employee, former employee, or applicant for employment who objects to material in his or her personnel file
9 must seek the removal on the basis that the information is inaccurate or misleading by filing a grievance through the
10 agency grievance procedure.~~

11 ~~(c) If the agency determines that the material in the employee's personnel file is inaccurate or misleading, the
12 agency shall remove or amend the inaccurate material so that the material objected to is accurate.~~

13 ~~(d) The employee does not have the right to appeal the contents of a performance appraisal or written warning.~~

14 ~~(e) No appeal involving objection to material in the file shall be filed with the Office of Administrative Hearings.]~~

15 An employee, former employee, or applicant objecting to material in his or her personnel file may follow the
16 internal agency grievance procedure in order to bring the existence of inaccurate or misleading information to the
17 attention of the agency, so long as that information is not a written disciplinary action or a performance appraisal.
18 If, during the agency grievance procedure, the agency agrees that the information should be removed or amended
19 from the file, the agency shall remove or amend the information. However, the employee may not appeal the
20 agency's decision to the Office of Administrative Hearings.

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22 *History Note:* Authority G.S. 126-34.01; 126-34.02; G.S. 126-25;

23 Temporary Adoption Eff. May 26, 2014.
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1 25 NCAC 01C .0403 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01C .0403 TRAINEE APPOINTMENTS**

- 4 (a) A trainee appointment may be made to a permanent position when:
- 5 (1) the job specification includes provisions for a trainee progression leading to
6 regular ~~appointment,~~ appointment;
 - 7 (2) recruitment efforts fail to attract qualified ~~candidates,~~ candidates;
 - 8 (3) operating need warrants a ~~trainee,~~ trainee; or
 - 9 (4) the recommended applicant fails to meet State education and experience requirements.
- 10 (b) Employees with a trainee appointment earn leave, and receive total state service credit, retirement benefits, and
11 health benefits. ~~When applicable, trainees~~ Trainees not in time limited positions subject to a reduction in force who
12 have completed six months of service or who had a permanent appointment prior to entering a trainee appointment
13 shall receive severance pay as provided in G.S. 126-8.5 and priority reemployment consideration.
- 14 (c) Employees with a trainee appointment shall work 24 continuous months to attain career status. An employee
15 with a trainee appointment shall achieve career status but remain in a trainee appointment if the length of the trainee
16 progression is greater than 24 months.

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18 *History Note: Authority G.S. 126-4; S.L. 2012-382; G.S. 126-1.1;*
19 *Eff. February 1, 1976;*
20 *Amended Eff. October 1, 2004; August 1, 1995; ~~August 1, 1978.~~ August 1, 1978;*
21 *Temporary Amendment Eff. May 23, 2014.*
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1 25 NCAC 01C .0404 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01C .0404 PROBATIONARY APPOINTMENTS**

4 (a) ~~Individuals~~ **Reinstatements that follow a break in service or new hires** receiving ~~initial~~ appointments to
5 permanent or time-limited ~~permanent~~—positions must serve a probationary period. The
6 probationary ~~periods~~ period is an extension of the selection process and provides the time for effective adjustment
7 of the new employee or elimination of those whose performance ~~will~~ does not meet acceptable standards.
8 The ~~maximum~~ length of the probationary period shall be ~~not less than three nor more than nine~~ 24 months of either
9 full-time or part-time employment from the actual date of employment. ~~Within 90 days of employment, prior to the~~
10 ~~granting of a permanent or time-limited permanent appointment, credentials~~ **Credentials** and application information
11 provided by the employee must be ~~verified.~~ verified within 90 days of employment. Agencies shall inform
12 applicants in writing that credentials must be verified prior to the granting of a permanent or time-limited permanent
13 appointment.

14 (b) Employees with a probationary appointment earn leave, and receive total state service credit,
15 retirement **benefits**, and health benefits. They are not eligible for severance pay or priority reemployment
16 consideration.

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18 *History Note: Filed as a Temporary Amendment Eff. January 1, 1988 For a Period of 180 Days to*
19 *Expire on June 28, 1988;*
20 *Legislative Objection Lodged Eff. June 13, 1983;*
21 *Authority G.S. 96-29; 126-4; ~~S.L. 2012-382~~; G.S. 126-1.1;*
22 *Eff. February 1, 1976;*
23 *Amended Eff. June 1, 1983; August 1, 1980; January 1, 1979; August 1, 1978;*
24 *Curative Amended Eff. June 22, 1983;*
25 *Amended Eff. August 1, 1995; March 1, 1988; ~~December 1, 1985~~; December 1, 1985;*
26 *Temporary Amendment Eff. May 26, 2014.*

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1 25 NCAC 01C .0411 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01C .0411 TYPES OF APPOINTMENTS PROVIDING PROBATIONARY PERIOD**
4 **CREDIT**

5 Satisfactory service during a ~~probationary~~, probationary temporary, or trainee appointment may constitute part or all
6 of the probationary ~~period.~~ period, which is 24 months of continuous service. Employment in an intermittent
7 appointment as defined in Rule .0408 of this Section may not be credited toward the probationary period.

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9 *History Note: Authority G.S. 126-4; G.S. 126-1.1;*
10 *Eff. December 1, 1985;*
11 *Amendment Eff. ~~December 1, 1988.~~ December 1, 1988;*
12 *Temporary Amendment Eff. May 26, 2014.*

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1 25 NCAC 01C .0412 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01C .0412 PERSONNEL CHANGES SUBJECT TO/NOT SUBJECT TO A**
4 **PROBATIONARY PERIOD**

5 (a) ~~A~~ **An additional** probationary period shall not be required when any of the following changes are made:

6 (1) ~~Promotion~~ **promotion** of ~~an employee~~ **a career State employee** ~~who has a permanent or time-~~
7 ~~limited permanent appointment;~~

8 (2) ~~Transfer~~ **transfer** of ~~an employee~~ **a career State employee** ~~who has a permanent or time limited~~
9 ~~permanent appointment;~~

10 (3) ~~Demotion~~ **demotion** of ~~an employee~~ **a career State employee** ~~who has a permanent or time limited~~
11 ~~permanent appointment;~~

12 (4) ~~Reinstatement~~ **reinstatement** after leave without pay; ~~or~~

13 (5) ~~The~~ **the** return of a policy-making/confidential exempt employee to a nonpolicy-making position.

14 (b) Personnel ~~Changes~~ **changes** may be subject to a probationary ~~period,~~ **as provided in G.S. 126-1.1.** An employee
15 with reduction in force priority consideration may be required to serve a new probationary period ~~if the employee~~
16 ~~has a break in service of more than 31 days~~ as outlined in ~~25 NCAC 1D .0510 (Priority Reemployment~~
17 ~~Consideration).~~ **[25 NCAC 01H .0901] Rule 01H .0901 of this Title (POLICY AND SCOPE).**

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19 *History Note:* Authority ~~G.S. 126-4; S.L. 2013-384, sec. III (codified as G.S. 126-1.1.~~ **[S.L. 2013-382];** ~~G.S. 126-~~
20 ~~1.1;~~
21 ~~Eff. December 1, 1985;~~
22 ~~Amended Eff. March 1, 1996; June 1, 1994. June 1, 1994;~~
23 ~~Temporary Amendment Eff. May 26, 2014.~~

1 25 NCAC 01D .0201 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, **with changes** as follows:

3 **25 NCAC 01D .0201 INITIAL EMPLOYMENT**

4 (a) A new appointment is the initial employment of an individual to a position ~~or the re-employment of individuals~~
5 ~~who are either not eligible for reinstatement or, at the agency's option, are not offered reinstatement.~~ in State
6 government.

7 (b) An employee entering into state service in a permanent or time-limited permanent position shall be given a
8 probationary or trainee appointment unless the employee is eligible for and the agency chooses to make
9 reinstatement with a permanent appointment. The probationary and trainee appointment periods are intended to
10 serve as an extension of the selection process and are used to determine whether the person meets acceptable
11 performance standards for the work for which employed. The employee shall earn all the benefits of an employee
12 with a permanent appointment during this time.

13 (c) The duration of a probationary appointment shall be ~~not less than three nor more than nine~~ 24 months of either
14 full-time or part-time employment. ~~The determination of the appropriate length shall depend on the complexity of~~
15 ~~the position and the rate of progress of the employee.~~ (This probationary period is not the same as the probationary
16 period prescribed for criminal justice officers in 12 NCAC 05 .0401.) The duration of the trainee appointment is
17 established for each regular classification to which a trainee appointment is made.

18 (d) The conditions of the probationary and trainee appointments shall be **clearly** conveyed to the applicant prior to
19 appointment. During the probationary or trainee period, the supervisor shall work **closely** with the employee in
20 counseling and assisting the employee to achieve a satisfactory performance level; progress of the employee shall be
21 reviewed during discussions between the employee and the supervisor. Following the probationary period when the
22 supervisor in consultation with other appropriate administrators determines that the employee's performance
23 indicated capability to become a satisfactory performer and merits retention in the position, the employee shall be
24 given a permanent appointment to the class. If the determination is that the employee's performance indicates that
25 the employee is not suited for the position and ~~cannot be expected to~~ does not meet acceptable performance
26 standards, the employee shall be separated from that position. Employees may **also** be separated during a
27 probationary **appointment for causes related to performance of duties or unacceptable personal conduct. Employees**
28 **in or** trainee **appointment appointments who are not career State employees may also be separated** for causes related
29 to performance of duties or unacceptable personal conduct. Except in cases of **alleged discrimination, harassment, or**
30 **retaliation,** a dismissal separation under these conditions of an employee in a trainee appointment who is not a career
31 State employee is not subject to the right of appeal to the State Personnel Commission. **may not be appealed through**
32 the agency grievance procedure and to the Office of Administrative Hearings.

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34 *History Note: Authority G.S. 126-4; G.S. 126-1.1, -34.01, -34.02;*
35 *Eff. February 1, 1976;*
36 *Amended Eff. August 1, 1995; December 1, 1988; January 1, 1979; December 1, 1978;*
37 *Temporary Amendment Eff. May 26, 2014.*

1 25 NCAC 01E .0901 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01E .0901 APPROVED HOLIDAYS**

4 G.S. 126-4(5) specifies the number of holidays to be observed and mandates the observance of Martin Luther King,
5 Jr.'s Birthday and Veterans' Day. The State Personnel Commission shall designate the remaining holidays to be
6 observed. The following additional holidays are adopted by the State Personnel Commission and approved by the
7 Governor: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving (2 days),
8 and Christmas (2 or 3 days). In addition to Martin Luther King, Jr.'s Birthday and Veteran's Day, the following are
9 designated as holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day,
10 Thanksgiving and the day after, and December 25 (Christmas) and the last business day before Christmas and the
11 first business day after Christmas.

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13 *History Note: Authority ~~G.S. 126-4~~; G.S. 126-4(5);*
14 *Eff. February 1, 1976;*
15 *Amended Eff. January 1, 2004; February 1, 1995; December 1, 1988; ~~October 1, 1977~~.*
16 *October 1, 1977;*
17 *Temporary Amendment Eff. May 26, 2014.*
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1 25 NCAC 01H .0901 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

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4 **25 NCAC 01H .0901** **POLICY AND SCOPE [REDUCTION IN FORCE APPLICATION AND APPEAL]**

5 (a) The rules in this Section apply to employees notified of or separated due to a reduction in force.

6 (b) Priority consideration shall be provided to career State employees who have received written notification of
7 imminent separation due to reduction in force. An employee who is separated from a time-limited appointment is
8 not eligible for priority consideration unless the appointment extends beyond three years.

9 (c) A career State employee, as defined in G.S. 126-1.1, with priority consideration who has reason to believe
10 priority consideration was denied in a selection ~~decision~~ decision, and who chooses to
11 ~~appeal~~ may ~~shall~~ appeal directly to the State Personnel Commission through the established contested hearing
12 process in accordance with G.S. 126-34.1(a)(5). agency grievance procedure in accordance with G.S. 126-34.02.

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14 *History Note: Authority G.S. 126-1A; 126-5(c)(2); 126-5(d)(1); 126-7.1;*

15 *Eff. March 1, 1987;*

16 *Amended Eff. December 1, 1995; March 1, 1994; June 1, 1992; March 1, 1991;*

17 *Recodified from 25 NCAC 01D .0510 Eff. December 29, 2003;*

18 *Amended Eff. ~~February 1, 2007.~~ February 1, 2007;*

19 *Temporary Amendment Eff. May 26, 2014.*

1 25 NCAC 01H .0902 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE PRIORITY**
4 **CONSIDERATION**

5 Upon written notification of imminent separation through reduction in force (RIF), an employee a career state
6 employee shall receive priority consideration for positions at an equal or lower salary grade (or salary grade
7 equivalency) for a period of 12 months pursuant to G.S. 126-7.1(e1). G.S. 126-7.1, unless the priority has been
8 satisfied in accordance with this section. The following conditions apply:

9 ~~(1) If the applicants for reemployment for a position include State employees currently possessing~~
10 ~~priority consideration as a result of RIF, a RIF employee with more than 10 years of service shall~~
11 ~~receive priority consideration over a RIF employee having less than 10 years of service in the~~
12 ~~same or related position classification;~~

13 ~~(2)~~(1) For employees receiving notification of imminent separation from trainee or flat rate positions,
14 the salary grade for which priority is to be afforded shall be determined as follows: For employees
15 in flat rate positions, the salary grade shall be the grade which has as its maximum a rate nearest to
16 the flat rate salary of the eligible employee. For eligible employees in trainee status, the salary
17 grade shall be the salary grade of the full class;

18 ~~(3)~~(2) An employee notified For employees receiving notification of imminent separation through
19 reduction in force while actively possessing priority consideration from a previous reduction in
20 force shall retain the initial priority for the remainder of the 12-month priority period. A new
21 priority consideration period shall then be afforded begin at the salary grade (or salary grade
22 equivalency), salary rate and appointment status of the position held at the most recent notification
23 of separation; separation, separation and shall expires expire 12 months from the most recent
24 notification date;

25 ~~(4)~~(3) An employee who, If after receiving formal notice of impending imminent reduction in force, an
26 employee retires, retires or applies for retirement or leaves state government employment prior to
27 the separation date date, waives the an employee has no right to priority consideration.
28 consideration; An employee who applies for retirement after being separated through reduction in
29 force may exercise priority consideration;

30 ~~(5)~~(4) Priority consideration is intended to provide employment at an equal or appointment status to that
31 held at the time of notification. Acceptance of a position at a lower appointment status shall not
32 affect priority. Employees notified of separation from permanent full-time positions shall have
33 priority consideration to for permanent full-time and permanent part-time positions. Employees
34 notified of separation from permanent part-time positions shall have priority
35 consideration to for permanent part-time positions only;

- 1 ~~(6)~~(5) Employees who have priority status at the time of application for a vacant position, and who apply
2 during the designated agency recruitment period, shall be continued as priority applicants until the
3 selection process is complete;
- 4 ~~(7)~~(6) ~~An~~ If an employee with priority status may not decline applies for a position but declines an
5 interview or offer of the position, ~~interviews or offers for positions within 35 miles of the~~
6 ~~employee's original work station without losing~~ the employee loses priority and ~~any remaining~~
7 ~~severance salary continuation,~~ if the position is at an ~~appointment status,~~ a salary grade (or salary
8 grade equivalency), ~~and or~~ salary rate equal to or greater than that held at the time of notification;
- 9 (7) If an employee with priority status is placed in a position within 35 miles of the employee's
10 original work station prior to the separation due to reduction in force, the employee does not lose
11 priority if the position is at a lower salary grade (or salary grade equivalency) or salary rate less
12 than that held at the time of notification, notification and if the position is at the same appointment
13 status;
- 14 (8) An employee with priority status may accept a temporary position at any level and retain
15 priority consideration, ~~consideration~~ and ~~severance salary continuation.~~ An employee receiving
16 severance salary continuation shall not be employed under a contractual arrangement in any State
17 agency, other than State universities and community colleges, until 12 months have elapsed since
18 the separation as provided by G.S. 143-27.2; G.S. 126-8.5;
- 19 (9) When priority has been granted for a lower salary grade (or salary grade equivalency) ~~or and~~
20 salary rate than that held at the time of notification, the employee retains priority for higher salary
21 grades (or salary grade equivalencies) ~~and salary rate~~ up to and including that held at the time of
22 the notification of separation;
- 23 (10) An employee with priority consideration may accept employment outside State government or in a
24 State position not subject to the State Personnel Human Resources Act and retain such
25 consideration through the 12-month priority period;
- 26 (11) Priority consideration is terminated when an eligible employee:
27 (a) ~~refuses an interview or offer for a position within 35 miles of the employee's original~~
28 ~~workstation if the position is at an appointment status and the same salary grade (or~~
29 ~~salary grade equivalency) salary grade (or salary grade equivalency) and salary rate equal~~
30 ~~to or greater than that held at the time of notification;~~
31 ~~(b)~~(a) accepts a position equal to or greater than the salary rate or employee's salary grade (or
32 salary grade equivalency) grade (or salary grade equivalency), salary rate and
33 appointment status of the full-time or part-time position held at the time
34 of ~~notification;~~ notification, in accord with subparagraph (4) above; or
35 ~~(c)~~(b) has received 12 months priority consideration;
- 36 (12) Priority consideration for employees notified of or separated through reduction in force does not
37 include priority to any exempt positions;

1 (13) When an employee with priority status accepts a position at a lower salary rate or lower
2 employee's salary grade (or salary grade equivalency) grade (or salary grade equivalency) or
3 salary rate and is subsequently terminated by disciplinary action, any remaining priority
4 consideration ceases; and

5 (14) An employee with priority status ~~may be~~ is required to shall serve a new probationary
6 period ~~only when:~~ when there is a break in ~~service.~~ service, as defined in [25 NCAC 01D
7 .0114.] Rule 01D .0114 of this Title.

8 (a) ~~the essential duties and responsibilities of the position into which the employee is being~~
9 ~~reemployed are significantly different from those of the position held at the time of~~
10 ~~reduction in force notification;~~

11 (b) ~~the prior, documented performance history of the employee indicates performance~~
12 ~~failings; or~~

13 (c) ~~the prior, documented unacceptable personal conduct of the employee would make a~~
14 ~~probationary period a prudent protection of agency interests.~~

15 ~~A decision by an agency to require a new probationary period shall not, however, nullify the~~
16 ~~employee's right to a future period of priority reemployment status should that employee receive~~
17 ~~reduction in force notification again while serving in probationary status.~~

18 *History Note:* Authority G.S. 126-4(6),(10); G.S. 126-7.1;

19 Eff. March 1, 1987;

20 Amended Eff. December 1, 1995; April 1, 1993; June 1, 1992; January 1, 1990;

21 Recodified from 25 NCAC 01D .0511 Eff. December 29, 2003;

22 Amended Eff. ~~February 1, 2007~~ February 1, 2007;

23 Temporary Amendment Eff. May 26, 2014.

24

25

1 25 NCAC 01H .0904 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01H .0904 AGENCY AND EMPLOYEE RESPONSIBILITIES**

4 (a) The employing agency shall notify the employee of impending imminent separation in accordance with G.S.
5 ~~126-7.1(a1)~~, G.S. 126-7.1(b) and inform the employee of the priority consideration to be afforded.

6 (b) The agency shall notify the Office of State ~~Personnel~~ Human Resources when:

- 7 (1) an employee is officially notified of reduction in force;
- 8 (2) an eligible employee accepts a position that satisfies the priority consideration;
- 9 (3) ~~an employee with priority status due to reduction in force is offered a lateral transfer or promotion~~
10 ~~and refuses, unless the position offered is more than 35 miles from the employee's original~~
11 ~~workstation; or an eligible employee refuses an interview or an offer that would satisfy the priority~~
12 ~~consideration; or~~
- 13 (4) other conditions that would satisfy or terminate an eligible employee's priority consideration are
14 discovered.

15 *History Note: Authority G.S. 126-4(6),(10); 126-7.1;*
16 *Eff. March 1, 1987;*
17 *Amended Eff. December 1, 1995, June 1, 1992; June 1, 1992, November 1, 1988;*
18 *Recodified from 25 NCAC 01D .0515 Eff. December 29, 2003;*
19 *Amended Eff. November 1, 2011; ~~February 1, 2007~~; February 1, 2007;*
20 *Temporary Amendment Eff. May 26, 2014.*

21

1 25 NCAC 01H .0905 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01H .0905 OFFICE OF STATE PERSONNEL HUMAN RESOURCES RESPONSIBILITIES**

4 ~~(a)~~ The Office of State ~~Personnel~~ Human Resources shall maintain a list of employees notified of reduction in force
5 that will serve as a reference for agencies in applying priority consideration reemployment.

6 (b) The Office of State ~~Personnel~~ Human Resources shall also provide outplacement assistance to separated
7 employees who wish to seek employment in the private sector. Such assistance includes resumé preparation,
8 personal marketing, and interview skills, along with ~~Division of Employment Security Commission~~ coordination for
9 placement referral.

10

11 *History Note:* Authority G.S. 126-4(6),(10); ~~S.L. 2013-382~~;
12 Eff. March 1, 1987;
13 Recodified from 25 NCAC 01D .0516 Eff. December 29, 2003;
14 Amended Eff. November 1, 2011; ~~February 1, 2007~~; February 1, 2007;
15 Temporary Amendment Eff. May 26, 2014.

16

1 25 NCAC 01H .1001 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, **with changes** as follows:

3 **25 NCAC 01H .1001 EXEMPT PRIORITY CONSIDERATION – POLICY AND SCOPE**

4 (a) The rules in this Section H.1000 apply to employees hired on or before August 20, 2013 and removed from:

- 5 (1) Exempt policymaking positions for reasons other than just cause; and
- 6 (2) Exempt managerial positions for reasons other than just cause. ~~cause but not because the~~
7 ~~employee's selection violated G.S. 126-14.2; and~~
- 8 ~~(3) Exempt managerial positions because the employee's selection violated G.S. 126-14.2.~~

9 (b) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an
10 exempt policymaking position, who is removed from an exempt policymaking position for reasons other than just
11 cause, shall receive a one-time priority. This priority shall be exercised by the employee within one year following
12 the date of the employee's separation. **Upon notice to the agency that priority is being requested, the** ~~The~~ employee
13 shall be offered any available non-exempt position for which the employee has applied and is qualified when the
14 position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject
15 position held prior to placement in the exempt policymaking position unless an offer has been made to, and accepted
16 by, a person qualified under **25 NCAC 01H .1005** **Rule 01H .1005 of this Section** or an employee notified of or
17 separated by a reduction in force, or a current State employee with greater cumulative State service subject to the
18 State ~~Personnel~~ Human Resources Act.

19 (c) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an
20 exempt managerial position, who is removed from an exempt managerial position for reasons other than just
21 cause ~~but not because the employee's selection violated G.S. 126-14.2~~, shall receive a one-time reemployment
22 priority, to be exercised by the employee within one year following the date of the employee's separation. **Upon**
23 **notice to the agency that priority is being requested, the** ~~The~~ employee shall be offered any available non-exempt
24 position for which the employee has applied and is qualified, when the position applied for is equal to or below the
25 salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt
26 managerial position unless an offer has been made to, and accepted by, a person qualified under **25 NCAC 01H**
27 **.1005, Rule 01H .1005 of this Section,** or an employee notified of or separated by a reduction in force, or a current
28 State employee with greater cumulative State service subject to the State ~~Personnel~~ Human Resources Act.

29 ~~(d) A career State employee with less than 10 years of service who was removed from an exempt managerial~~
30 ~~position because the employee's selection violated G. S. 126-14.2 shall receive a one-time reemployment priority, to~~
31 ~~be exercised by the employee within one year following the date of the employee's separation. Upon notice to the~~
32 ~~agency that priority is being requested, the employee shall be offered any available non-exempt position for which~~
33 ~~the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or~~
34 ~~salary grade equivalency) of the most recent position held prior to placement in the exempt managerial position~~
35 ~~unless an offer has been made to, and accepted by, a person qualified under 25 NCAC 01H .1005, or an employee~~
36 ~~notified of or separated by a reduction in force, or a current State employee with greater cumulative State service~~
37 ~~subject to the State Personnel Act.~~

1 ~~(e)~~ (d) The priority considerations described in ~~Paragraph~~ Paragraphs ~~(a)~~, (b) and (c) of this Rule shall expire when
2 a formal written offer is extended for employment in the position for which the employee has applied regardless of
3 the position's salary grade (or salary grade ~~equivalency~~; equivalency) if the employee has notified the agency in
4 writing that the employee wishes to exercise priority consideration.

5 (f) If an eligible exempt employee applies for and accepts a position through the regular, non-priority selection
6 process, which is at a salary grade (or salary grade equivalency) below that held in the most recent subject position,
7 that person shall retain the one-time priority for higher level positions for the remainder of the 12-month period.

8 (g) ~~(e)~~ If an employee does not receive notice as described in ~~25 NCAC 01H .0630(b)~~; Rule 01H .0630(b) of this
9 Subchapter, the employee remains subject to the State ~~Personnel~~ Human Resources Act until 10 working days after
10 the employee receives written notification of the exempt status. If an otherwise eligible employee is removed from
11 the position designated as exempt, the employee has priority consideration to a position at the same salary grade (or
12 salary grade equivalency) as the most recent subject position.

13 *History Note:* Authority G.S. 126-1.1; 126-5; S.L. 2013-382, sections 4.3, 4.4, 4.6, and 7.6.;

14 *Eff. March 1, 1987;*

15 *Amended Eff. June 1, 1994; June 1, 1992; November 1, 1988;*

16 *Recodified from 25 NCAC 01D .0512 Eff. December 29, 2003;*

17 *Amended Eff. ~~February 1, 2007~~. February 1, 2007;*

18 *Temporary Amendment Eff. May 26, 2014.*

19

1 25 NCAC 01J .0603 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, **with changes** as follows:

3 **25 NCAC 01J .0603 APPEALS**

4 (a) A career employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of
5 his **or her** receipt of written notice of such action to file an appeal with his department/university grievance
6 procedure. If an employee does not appeal his **or her** dismissal through the agency grievance procedure within 15
7 days, ~~the initial letter of dismissal setting forth the specific acts or omissions that are the basis of the dismissal shall~~
8 ~~become the agency's final agency decision. then the employee shall have no right to file a contested case with the~~
9 Office of Administrative Hearings under G.S. 126-34.02.

10 (b) If an employee appeals his **or her** dismissal through the agency grievance procedure, then the initial dismissal
11 letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the
12 conclusion of the employee's appeal through the agency grievance procedure. ~~Grievances which do not allege~~
13 ~~discrimination, a violation of G.S. 126 7.1(a) or (c), a violation of G.S. 126 82, or that do not allege a denial of~~
14 ~~employment or promotion in violation of G.S. 126 14.2 must follow the department or university grievance~~
15 ~~procedure. An appeal to the State Personnel Commission of a final departmental or university decision must be filed~~
16 ~~with the Office of Administrative Hearings in accordance with G.S. 150B 23 within 30 calendar days of receipt of~~
17 ~~the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to~~
18 ~~the agency or department, within 30 calendar days of the alleged harassing action, and the agency or department~~
19 ~~must be given 60 calendar days in which to take remedial action, if any, unless the department or agency has waived~~
20 ~~the 60 day period, and the employee has acknowledged such waiver. The acknowledgement and waiver shall be in~~
21 ~~writing. An appeal to the State Personnel Commission of unlawful workplace harassment must be filed with the~~
22 ~~Office of Administrative Hearings in accordance with G.S. 150B 23 and within 30 calendar days of notification of~~
23 ~~the remedial action, if any, taken by the agency.~~

24 ~~(b)(c)~~ Grievances which allege ~~discrimination not including unlawful workplace harassment~~ may, at the election of
25 the employee, proceed through the department or university procedure or proceed directly to the State Personnel
26 Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A
27 direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a decision by that agency
28 to the SPC) alleging ~~discrimination not including unlawful workplace harassment~~ must be filed in accordance with
29 G.S. 150B 23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory
30 act discrimination, harassment, or retaliation, must also follow the agency grievance process. [Employee]
31 Employees with grievances alleging discrimination, harassment, or retaliation [which] who do not follow the agency
32 grievance process shall have no right to file a contested case with the Office of Administrative Hearings.

33 ~~(c) Grievances which allege a violation of G.S. 126 14.2 must be filed with the Civil Rights Division of the OAH~~
34 ~~within 30 calendar days after the employee or applicant receives written notice that the position in question has been~~
35 ~~filled. The employee or applicant must file a petition for a contested case hearing pursuant to G.S. 126 34.1 and~~
36 ~~Article 3 of Chapter 150B within 15 days of the initial determination by the OAH Civil Rights Division that there~~
37 ~~has been a violation of G.S. 126 14.2.~~

1 ~~(d) Grievances filed on an untimely basis (see G.S. 126-14.4, 126-35, 126-36 and 126-38) must be dismissed.~~
2 ~~Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the~~
3 ~~alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than~~
4 ~~30 calendar days after notification of the remedial action, if any, taken by the agency must be dismissed.~~

5 (d) The following grievances must also ~~be~~ follow the agency grievance procedure before being filed in the Office
6 of Administrative Hearings: denial of veteran's preference provided for in Chapter 128 of the General Statutes;
7 denial of hiring or promotion because of an unlawful failure to post a position; denial of hiring or promotion due to
8 failure to receive career State employee priority consideration; denial of hiring or promotion due to failure to receive
9 reduction in force priority ~~consideration~~, ~~consideration~~, and a whistleblower grievance as provided in Article 14 of
10 Chapter 126.

11
12 *History Note: Authority G.S. 126-1A; 126-35; 150B, Article 3; 150B-23; G.S. 126-34.01, -34.02;*
13 *Eff. February 1, 1976;*
14 *Amended Eff. March 1, 1994; April 1, 1989; December 1, 1984; October 1, 1984;*
15 *Temporary Amendment Eff. February 18, 1999;*
16 *Amended Eff. February 1, 2011; July 18, 2002,;*
17 *Temporary Amendment Eff. May 26, 2014.*

1 25 NCAC 01J .0610 is amended under temporary procedures, as originally published on the OAH website on
2 October 28, 2013, with changes as follows:

3 **25 NCAC 01J .0610 WRITTEN WARNING**

4 (a) The supervisor shall monitor and promote the satisfactory performance of work assignments and assure that
5 employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may
6 constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related
7 and non-work-related conduct and may be intentional or unintentional. When the supervisor determines that
8 disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of
9 disciplinary action that an employee must receive. The supervisor may elect to issue a written warning for grossly
10 inefficient job performance or unacceptable personal conduct. ~~conduct, without waiving the agency's right to the~~
11 ~~treat future occurrences of the same conduct as subject to immediate dismissal.~~ The written warning must:

- 12 (1) ~~Inform~~ **inform** the employee that this is a written warning, and not some other non-disciplinary
13 process such as counseling;
- 14 (2) ~~Inform~~ **inform** the employee of the specific issues that are the basis for the warning;
- 15 (3) ~~Tell~~ **tell** the employee what specific improvements if applicable must be made to address these
16 specific issues;
- 17 (4) ~~Tell~~ **tell** the employee the time frame allowed for making the required improvements/corrections.
18 Absent a specified time frame, 60 days is the time frame allowed for **correcting** unsatisfactory job
19 performance and immediate correction is required for grossly inefficient job performance or
20 unacceptable personal conduct; **and**
- 21 (5) ~~Tell~~ **tell** the employee the consequences of failing to make the required improvements/corrections;

22 **(b) A written warning must be issued in accordance with the procedural requirements of this Section, and include**
23 ~~any applicable appeal rights.~~

24
25 *History Note: Authority G.S. 126-4; G.S. 126-34.02;*
26 *Eff. February 1, 1976;*
27 *Amended Eff. October 1, 1995; November 1, 1990; January 1, 1989; ~~September 1, 1988.~~*
28 *September 1, 1988;*
29 *Temporary Amendment Eff. May 26, 2014.*

30

1 25 NCAC 01J .1101, originally proposed to be repealed, is amended under temporary procedures, as originally
2 published on the OAH website on October 28, 2013, **with changes** as follows:

3 **25 NCAC 01J .1101 UNLAWFUL WORKPLACE HARASSMENT AND RETALIATION**

4 (a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful
5 workplace harassment or retaliation based on opposition to unlawful workplace harassment of state employees or
6 applicants and to require that every agency and university with employees subject to the State Human Resources Act
7 establish policies and programs to ensure that work sites are free of unlawful workplace harassment and retaliation.

8 (b) As used in this Rule:

9 (1) “unlawful workplace harassment” means unsolicited and unwelcome speech or conduct based
10 upon race, sex, ~~creed~~, religion, national origin, age, color, disability, or genetic information that
11 creates a hostile work environment or under circumstances involving quid pro quo.

12 (2) “hostile work environment” means an environment that both a reasonable person would find
13 hostile or abusive and one that the particular person who is the object of the harassment perceives
14 to be hostile or abusive. Whether a Hostile work environment exists is determined by looking at
15 all of the circumstances, including the frequency of the allegedly harassing conduct, its severity,
16 whether it is physically threatening or humiliating, and whether it unreasonably interferes with an
17 employee's work performance.

18 (3) “quid pro quo” harassment means unwelcome sexual advances, requests for sexual favors, or
19 other verbal or physical conduct when:

20 (A) submission to such conduct is made either explicitly or implicitly a term or condition of
21 an individual's employment; or

22 (B) submission to or rejection of such conduct by an individual is used as the basis for
23 employment decisions affecting such individual.

24 (4) “retaliation” means adverse action taken because of opposition to unlawful workplace harassment.

25 (c) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace
26 harassment or retaliation, and no personnel employment decisions shall be made on the basis of race, sex, creed,
27 religion, national origin, age, color, disability, or genetic information.

28 ~~(a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful
29 workplace harassment or retaliation based on opposition to unlawful workplace harassment of state employees or
30 applicants and to require that every agency and university with employees subject to the State Personnel Act
31 establish policies and programs to ensure that work sites are free of unlawful workplace harassment and retaliation.~~

32 ~~(b) As used in this Rule:~~

33 ~~(1) Unlawful workplace harassment is defined as unsolicited and unwelcome speech or conduct based
34 upon race, sex, creed, religion, national origin, age, color, or disabling condition as defined by
35 G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo.~~

36 ~~(2) Hostile Work Environment is one that both a reasonable person would find hostile or abusive and
37 one that the particular person who is the object of the harassment perceives to be hostile or~~

1 abusive. Hostile work environment is determined by looking at all of the circumstances, including
2 the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening
3 or humiliating, and whether it unreasonably interferes with an employee's work performance.

4 ~~(3) Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or
5 other verbal or physical conduct when:~~

6 ~~(A) submission to such conduct is made either explicitly or implicitly a term or condition of
7 an individual's employment; or~~

8 ~~(B) submission to or rejection of such conduct by an individual is used as the basis for
9 employment decisions affecting such individual.~~

10 ~~(4) Retaliation is defined as adverse action taken because of opposition to unlawful workplace
11 harassment.~~

12 ~~(e) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace
13 harassment or retaliation as defined in Paragraph (b) of this Rule, and no personnel decisions shall be made on the
14 basis of race, sex, creed, religion, national origin, age, color, or disabling condition as defined by G.S. 168A-3.~~

15 **(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and
16 retaliation.**

17 ~~(e) Grievances. Any current or former state employee who feels he or she has been the victim of unlawful
18 workplace harassment or retaliation in violation of this Rule shall file a grievance through the departmental
19 grievance procedure. Filing such a written complaint is a prerequisite to any further appeal to the Office of
20 Administrative Hearings regarding unlawful workplace harassment or retaliation. After the employee's written
21 complaint is submitted to the agency or university, the department, agency or university shall have 60 days within
22 which to consider the complaint and take any remedial action, unless the department, agency or university has
23 waived the 60 day period, and the employee has acknowledged such waiver. The waiver and acknowledgement
24 shall be in writing. Any current or former state employee who feels that he or she has been subjected to unlawful
25 workplace harassment or retaliation may appeal directly to the Office of Administrative Hearings (such appeal
26 consisting of a contested case hearing under G.S. 150B and a decision by the Office of Administrative Hearings)
27 only after submitting a written complaint through the agency grievance and waiting 60 days or receiving notification
28 of remedial action, if any, by the department, agency or university whichever shall occur first.~~

29 ~~(f) Agency or University Plans. Each agency head or university chancellor shall include as a supplement to the
30 Affirmative Action Plan or Equal Employment Opportunity Plan a plan setting forth the steps to be taken to prevent
31 and correct unlawful workplace harassment and retaliation. Each department, agency or university shall submit such
32 a plan to the Office of State Personnel for review, technical assistance, and approval by the Director of the Office of
33 State Personnel. Each plan on unlawful workplace harassment and retaliation shall include:~~

34 ~~(1) publication and dissemination of a policy statement establishing that unlawful workplace
35 harassment and retaliation of employees and applicants is prohibited;~~

36 ~~(2) establishment of internal procedure to handle complaints of unlawful workplace harassment and
37 retaliation. This procedure shall provide investigation and resolution of complaints within the~~

- 1 department or university and shall offer the employee recourse other than through the immediate
2 supervisor;
- 3 ~~(3) utilization of training and other methods to prevent unlawful workplace harassment and~~
4 ~~retaliation;~~
- 5 ~~(4) statement that the department will, in allegations of unlawful workplace harassment or retaliation,~~
6 ~~review the entire record and the totality of the circumstances, to determine whether the alleged~~
7 ~~conduct constitutes unlawful workplace harassment or retaliation;~~
- 8 ~~(5) development of disciplinary actions for conduct determined to constitute unlawful workplace~~
9 ~~harassment or retaliation, to be implemented on a case by case basis on the facts of each~~
10 ~~complaint;~~
- 11 ~~(6) prohibition of internal interference, coercion, restraint or reprisal against any person complaining~~
12 ~~of alleged unlawful workplace harassment or retaliation; and~~
- 13 ~~(7) notification to all employees that a complaint or allegation of unlawful workplace harassment or~~
14 ~~retaliation must be filed within the department, agency or university and that the department,~~
15 ~~agency or university has 60 days (or fewer, if waived by the department, agency or university and~~
16 ~~acknowledged by employee) to take action, if any, in response to the complaint prior to the filing~~
17 ~~of a complaint of unlawful workplace harassment or retaliation with the Office of Administrative~~
18 ~~Hearings.~~

19

20 *History Note: Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36; 126-36.1;*
21 *Eff. December 1, 1980;*
22 *Amended Eff. November 1, 1988; April 1, 1983;*
23 *Temporary Amendment Eff. February 18, 1999;*
24 *Amended Eff. July 18, 2002;*
25 *Recodified from 25 NCAC 01C .0214 Eff December 29, 2003;*
26 *Amended Eff. ~~June 1, 2012~~; June 1, 2012;*
27 *Temporary Amendment Eff. May 26, 2014.*

28

1 25 NCAC 01J .1201, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1201 GENERAL PROVISIONS**

5

6 *History Note:* *Authority G.S. 126-1.1; 126-4(17); 126-25; 126-34; 126-35; 126-39; S.L. 2013-382;*

7 *Eff. March 1, 2005;*

8 *Temporary Repeal Eff. March 23, 2014.*

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1 25 NCAC 01J .1202, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1202 AGENCY RESPONSIBILITIES**

5

6 *History Note: Authority G.S. 126-4(9); S.L. 2013-382;*

7

Eff. March 1, 2005;

8

Temporary Repeal Eff. May 23, 2014.

1 25 NCAC 01J .1203, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1203 AGENCY GRIEVANCE REPORTS**

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6 *History Note: Authority G.S. 126-4(9); S.L. 2013-382;*

7

Eff. March 1, 2005;

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Temporary Repeal Eff. May 23, 2014.

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1 25 NCAC 01J .1204, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1204 DISCRIMINATION AND RETALIATION / SPECIAL PROVISIONS**

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7 *History Note:* *Authority G.S. 126-4(9); 126-16; 126-17; 126-34.1(a);126-36(a);S.L. 2013-382;*

8 *Eff. March 1, 2005;*

9 *Temporary Repeal Eff. March 23, 2014.*

1 25 NCAC 01J .1205, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1205 UNLAWFUL WORKPLACE HARASSMENT**

5

6 *History Note:* Authority G.S. 126-4(9); 126-4(11); 126-34.1(a); 126-36(b)(1),(2); S.L. 2013-382;

7

Eff. March 1, 2005;

8

Temporary Repeal Eff. May 23, 2014.

1 25 NCAC 01J .1206, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1206 TIME LIMITS**

5

6 *History Note:* *Authority G.S. 126-4(9); 126-34.1;*

7 *Eff. March 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

9

1 25 NCAC .01J .1207, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1207 FINAL AGENCY ACTION**

5

6 *History Note:* Authority G.S. 126-4(9); 126-7.2; 126-35; 126-37; 126-38; 150B-23(a); S.L. 2013-382;

7

Eff. March 1, 2005;

8

Temporary Repeal Eff. May 23, 2014.

1 25 NCAC 01J .1208, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1208 LEAVE IN CONNECTION WITH GRIEVANCES**

5

6 *History Note: Authority G.S. 126-4(9); S.L. 2013-382;*

7

Eff. March 1, 2005;

8

Temporary Repeal Eff. May 23, 2014.

9

1 25 NCAC 01J .1301, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1301 MINIMUM PROCEDURAL REQUIREMENTS**

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6 *History Note: Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34; 126-34.1; 126-34.2;*
7 *126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382;*

8 *Eff. March 1, 2005;*

9 *Temporary Repeal Eff. May 23, 2014.*

10

1 25 NCAC 01J .1302 is adopted under temporary procedures, as originally published on the OAH website on October
2 28, 2013, **with changes** as follows:

3 **25 NCAC 01J .1302 GENERAL AGENCY GRIEVANCE PROCEDURE REQUIREMENTS**

4 (a) All agencies and universities shall adopt the Employee Grievance Policy, which shall be approved by the Office
5 of State Human ~~Resources.~~Resources, based on the standards in Paragraph (d) of this section.

6 (b) Grievances filed on an untimely basis must be dismissed.

7 (c) A grievant who has an unexcused failure to attend the Step 1 - Mediation or Step 2 - Hearing as scheduled
8 forfeits the right to proceed with the ~~internal~~ grievance process.

9 (d) An agency or university grievance process shall include the following:

- 10 (1) A list of who may file a grievance;
- 11 (2) A list of grounds for filing a grievance under the internal grievance process;
- 12 (3) A list of grounds for which contested cases may be brought to the Office of Administrative
13 Hearings after the conclusion of the ~~internal~~ grievance process;
- 14 (4) An informal process for attempting to resolve a grievable issue prior to the ~~employee~~ employee's
15 filing a formal ~~internal~~ grievance;
- 16 (5) The timeframes in which grievable issues must be raised in both the informal and formal ~~internal~~
17 grievance process;
- 18 (6) The timeframes in which the agency or university must complete the informal process and each
19 step of the formal ~~internal~~ grievance process;
- 20 (7) Mediation shall serve as Step 1 of the formal ~~internal~~ grievance process. A ~~detailed~~
21 the mediation process and timeframe to be followed in Step 1 shall be provided to include that a
22 mediation agreement is legally binding and that if impasse ~~occurs;~~ occurs, the agency shall inform
23 the grievant of the Step 2 grievance process and timeframe for filing;
- 24 (8) A Hearing shall serve as Step 2 of the formal ~~internal~~ grievance process. A detailed description of
25 the hearing process and timeframe to be followed in Step 2 shall be provided, including that a
26 grievant has the opportunity to present the grievance orally to a reviewer(s) outside the grievant's
27 chain of command, ~~eg., e.g. Hearing Officer~~ hearing officer or ~~Hearing Panel.~~ hearing panel. The
28 ~~Hearing Officer~~ hearing officer or ~~Hearing Chair~~ hearing chair shall draft a proposed
29 recommendation with findings of fact for a ~~Final Agency Decision;~~ final agency decision;
- 30 (9) The process and timeframe for the proposed recommendation to be submitted to the Office of
31 State Human Resources for review and approval;
- 32 (10) The process and timeframe for issuance of a Final Agency Decision shall not exceed 90 calendar
33 days of the initial filing of the grievance in the formal ~~internal~~ grievance process;
- 34 (11) Information about any applicable appeal rights to the Office of Administrative Hearings shall be
35 included in the Final Agency Decision;
- 36 (12) The responsibilities of all parties involved in the grievance process to include; include grievant,
37 respondent, hearing officer, hearing panel and chair, agency and university Human Resource

1 Office, Equal Employment Officer, Affirmative Action Officer, Agency Head and designee, and
2 the Director of the Office of State Human Resources and designees; and

3 (13) The manner in which changes in the grievance policies will be communicated to employees.
4

5 *History Note: Authority G.S. 126-34.01; 126-34.02;*

6 *Temporary Adoption Eff. May 23, 2014.*

1 25 NCAC 01J .1303, as originally published on the OAH website on October 28, 2013, is adopted under temporary
2 procedures:

3 **25 NCAC 01J .1303 AGENCY AND UNIVERSITY GRIEVANCE REPORTS AND DATA ENTRY**

- 4 (a) Every agency and university shall, semi-annually and as otherwise requested by the Office of State Human
5 Resources, compile information on employee grievances. These reports shall be due to the Office of State
6 Human Resources on the first business day of each of the following months: January and July.
- 7 (b) The Office of State Human Resources shall make reports to the State Human Resources Commission at its
8 February and August meetings based upon the information supplied in semi-annual agency reports.
- 9 (c) **Every agency and university shall** ~~Enter~~ **enter** and maintain all grievance data on a monthly basis in the
10 State's HR/Payroll system or other applicable human resources information system.

11

12 *History Note: Authority: G.S. 126-4(6), (9).*

13 *Temporary adoption eff. May 23, 2014.*

14

1 25 NCAC 01J .1304 **[proposed as Rule .1316]** as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures **with changes** as follows:

3 ~~25 NCAC 01J .1316~~ **25 NCAC 01J .1304** **SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES,**
4 **CONTESTED CASES**

5 (a) Any mediation agreement, settlement agreement, or consent agreement in a grievance or contested case that
6 requires the entering of data into human resources and payroll information system used by agencies with employees
7 subject to Chapter 126, must be approved by the Office of State Human Resources for compliance with all rules
8 contained in Subchapters 1C (Personnel Administrataion), 1D (Compensation), 1E (Employee Benefits), 1H
9 (Recruitment and Selection), and 1J (Employee Relations) in Title 25 of the North Carolina Administrative Code
10 before the agency enters the data.

11 (b) Data is required to be entered into the human resources and payroll information system by an agency when it
12 determines that an action must be taken that affects classification, salary, leave, demotion, reassignment, transfer, or
13 for any other human resources action, except where the only ~~personal~~ personnel action taken as a result of the
14 settlement is the substitution of a resignation for a dismissal.

15 (c) Approval by the Office of State Human Resources shall be indicated by the signature of the State Human
16 Resources Director or his or her designee in an appropriate place on the settlement or consent agreement or by other
17 means acceptable to the Office of State Human Resources Director. This provision shall not be construed to require
18 Office of State Human Resources approval of a settlement in which the only portion requiring approval is the
19 awarding of attorney's fees to the employee's attorney by the State Human Resources Commission.

20 (d) This provision shall also not be construed to require approval of any settlement the terms of which allow an
21 employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.

22 (e) The provisions of ~~25 NCAC 01A .0104~~ Rule 01A .0104 of this Title (EXCEPTIONS AND VARIANCES) must
23 be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires
24 an exception to or variance from the rules in this ~~Chapter.~~ Chapter contained in Subchapters 1C (Personnel
25 Administrataion), 1D (Compensation), 1E (Employee Benefits), 1H (Recruitment and Selection), and 1J (Employee
26 Relations). This compliance shall be in addition to the requirements of this Rule. Any settlement or consent
27 agreement that contains a provision that requires an exception to or variance from existing human resources policy
28 must be reviewed and approved by the Office of State Human Resources Director prior to the processing of any
29 human resources action forms by the Office of State Human Resources or the university human resources and
30 payroll system.

31 (f) Requests to enter data into the State's human resources and payroll system that are required by the provisions of
32 any settlement or consent agreement that has not been approved by the Office of State Human Resources as required
33 by this ~~Rule,~~ Rule shall not be processed by the human resources and payroll information system used by agencies
34 with employees subject to Chapter 126, and shall be returned to the agency without action.

35 **(g) Any mediation agreement, settlement agreement, consent agreement or order issued under Chapter 126 of the**
36 **General Statutes shall comply with the rules in this Subchapter. However, no rules in this Subchapter shall constrain**
37 **the authority of any agency to request an exception from these rules; nor shall any provision of these rules restrict**

1 the discretion and authority of any decision maker applying these rules to apply the rules consistent with the
2 decision maker's discretion and authority.

3

4 *History Note: Authority ~~G.S. 126-4~~; 126-4; 126-34.01.*

5 *Temporary Adoption Eff. May 23, 2014.*

1 25 NCAC 01J .1305 [proposed as Rule .1304] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1304~~ 25 NCAC 01J .1305 **OFFICE OF STATE HUMAN RESOURCES REVIEW AND**
4 **APPROVAL OF FINAL AGENCY DECISION (FAD)**

5 The Director of the Office of State Human Resources shall:

- 6 (1) Review every agency/university final agency decision (FAD).
- 7 (2) Establish criteria and standards for the content of a FAD.
- 8 (3) May approve as written or make recommendations for modifications or reversal to the agency so
9 that the FAD complies with criteria established by the Office of State Human Resources.

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History Note: Authority G.S. 126-34.01; ~~126-34.02~~;
Temporary Adoption Eff. May 23, 2014.

1 25 NCAC 01J .1306 **[proposed as Rule .1307]** as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1307~~ **25 NCAC 01J .1306 BACK PAY**

4 In grievances filed on or after August 21, 2013:

- 5 (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- 6 (2) Full or partial back pay is not dependent upon whether reinstatement is ordered.
- 7 (3) Gross back pay shall always be reduced by any interim earnings, except that interim earnings from
8 employment which was approved secondary employment prior to dismissal shall not be set off
9 against gross back pay. Any unemployment insurance benefits paid to the employee shall also be
10 deducted from the gross back pay amount ~~due~~, due if unemployment insurance benefits were not
11 taxed when received by the employee.
- 12 (4) All applicable state and federal withholding taxes, including social security ~~taxes~~ taxes, shall be
13 paid from the reduced gross back pay ~~due~~; due. ~~reduced~~ Reduced gross back pay ~~being~~ is gross
14 back pay due minus interim earnings ~~or~~ and unemployment insurance benefits received.
- 15 (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of
16 gross back pay due.
- 17 (6) Back pay shall include payment for all holidays ~~which~~ that the grievant would have been paid for
18 except for the interruption in employment status. Holiday premium pay shall ~~never~~ not be a part
19 of any back pay award.
- 20 (7) Shift premium pay shall be a part of a back pay ~~award~~, award if the grievant would have been
21 entitled to such pay in the absence of the interruption in employment. This benefit shall not be
22 applicable in cases involving a failure to hire or a failure to promote.
- 23 (8) Employees shall not be entitled to any discretionary pay ~~which~~ that may or may not have been
24 awarded to them in the absence of the interruption in employment (for example, merit increments).
- 25 (9) Back pay shall include any across the board compensation ~~which~~ that would have been included in
26 the grievant's regular salary except for the interruption in employment. This includes one
27 time ~~"bonuses"~~, "bonuses." across the board legislative increments or across the board legislative
28 pay increases.
- 29 (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment,
30 back pay shall include the difference between the prorated longevity payment made at dismissal
31 and the amount of longevity pay that would have been payable had employment not been
32 interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for
33 longevity pay shall be made in the back pay award. The prorated longevity payment made at the
34 time of dismissal shall be deducted from the full amount otherwise payable on the next longevity
35 eligibility date.
- 36 (11) Back pay must be applied for on the appropriate Office of State Human Resources form, available
37 on the Office of State Human Resources website, www.oshr.nc.gov.

1 (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's
2 efforts to obtain available, suitable employment following separation from state government. The
3 burden of proof that a grievant did not mitigate his or her lost wages by seeking employment
4 following separation shall be on the agency. The burden of proof that an employee mitigated his or
5 her lost wages by seeking employment following separation shall be on the employee.

6
7 *History Note:* *Authority G.S. 126-4(9); 126-34.01;126 -34.02;*
8 *Temporary Adoption Eff. May 23, 2014.*

1 25 NCAC 01J .1307 [proposed as Rule .1308] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1308~~ **25 NCAC 01J .1307 FRONT PAY**

4 In grievances filed on or after August 21, 2013:

- 5 (1) Front pay may be awarded in all cases in which front pay is warranted by law.
- 6 (2) Front pay is the payment of an amount to an employee above his/her his or her regular salary, such
7 excess amount representing the difference between the employee's salary in his/her his or her
8 current position and a higher salary determined to be appropriate due to a finding of
9 discrimination.
- 10 (3) Front pay may also result from an order of reinstatement to a position of a particular level, level
11 which that the agency is unable to accommodate immediately. Front pay shall be paid for such
12 period as the agency is unable to hire, promote promote, or reinstate the employee to a position at
13 the appropriate level and as warranted by law.
- 14 (4) Front pay shall terminate upon acceptance or rejection of a position consistent with the order of
15 the commission. to which the employee has been determined to be entitled.
- 16 (5) Front pay shall be available as a remedy in cases involving hiring, promotion, demotion demotion,
17 or dismissal.
- 18 (6) Front pay shall be payable under the same conditions as back pay except that the only deductions
19 from front pay shall be for usual and regular deductions for state and federal withholding taxes and
20 the employee's retirement contribution. There may also be a deduction for other employment
21 earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the
22 grievant.
- 23 (7) Shift premium pay and holiday premium pay shall not be available on front pay.

24

25 *History Note: Authority G.S. 126-4(9); 126-34.02;*

26 *Temporary Adoption Eff. May 23, 2014.*

27

1 25 NCAC 01J .1310 is adopted under temporary procedures, as originally published on the OAH website on
2 December 30, 2013, with changes as follows:

3 **25 NCAC 01J .1310 INTEREST**

4 The state shall not be required to pay interest on any back pay award.

5

6 *History Note: Authority 126-4(9).*

7 *Temporary Adoption Eff. May 23, 2014.*

1 25 NCAC 01J .1312 [proposed as Rule 1311] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1311~~ **25 NCAC 01J .1312 CAUSES FOR REINSTATEMENT**

4 For grievances filed on or after August 21, 2013, reinstatement from dismissal, suspension, or demotion may be
5 ordered only upon a finding of lack of substantive just cause (25 NCAC 01J .0604) or discrimination prohibited by
6 G.S. 126-16 and 126-34.02. For the purpose of this Rule, and in addition to those matters listed in ~~25 NCAC 01J~~
7 ~~.0604~~, Rule .0604 of this Subchapter, failure to issue the required number and kind of warnings or other disciplinary
8 actions prior to dismissal for unsatisfactory job performance shall also be considered to constitute a lack of
9 substantive just cause.

10

11 *History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;*
12 *Temporary Adoption Eff. May 23, 2014.*

13

14

1 25 NCAC 01J .1313, as originally published on the OAH website on October 28, 2013, is adopted under temporary
2 procedures as follows:

3
4 **25 NCAC 01J .1313 SUSPENSION WITHOUT PAY**
5 For grievances filed on or after August 21, 2013, back pay shall be ordered in those cases in which it is determined
6 that a suspension without pay lacked substantive just cause or was an act of discrimination prohibited by G.S. 126-
7 16 or 126-34.02.

8
9 *History Note: Authority G.S. 126-4(6); 126-16; 126-34.02; 126-35;*
10 *Temporary Adoption Eff. May 23, 2014.*

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12

1 25 NCAC 01J .1314, as originally published on the OAH website on October 28, 2013, is adopted under temporary
2 procedures **with changes** as follows:

3 **25 NCAC 01J .1314 DISCRIMINATION, HARASSMENT, AND OR RETALIATION**

4 For grievances filed on or after August 21, 2013, back pay, transfer, ~~promotion~~ promotion, or other appropriate
5 ~~remedies,~~ remedies, including corrective remedies to ensure that the same or similar acts do not recur, may be
6 ordered where discrimination, harassment, or retaliation in violation of G.S. 126-16 or 126-34.02 ~~are~~ is found.

7

8 *History Note: Authority G.S. 126-4(9); 126-16; 126-34.02;*

9 *Temporary Adoption Eff. May 23, 2014.*

10

1 25 NCAC 01J .1315 [proposed as Rule .1310], as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1310~~ **25 NCAC 01J .1315** VOLUNTARY PROGRAMS OR BENEFITS

4 Voluntary programs or benefits (such as the 401K program, voluntary health and life insurance programs or deferred
5 compensation) are the choice of the employee and are the employee's responsibility. Such voluntary programs or
6 benefits are not addressed by any awards under these rules and Chapter ~~126~~, but may be governed by contractual
7 provisions with non-state agencies. 126. Retroactive contributions or membership in any such program shall not be
8 part of any remedy awarded to any employee. To the extent that retroactive coverage or membership is available, the
9 grievant is responsible for any action seeking to obtain such benefits.

10

11 *History Note:* Authority ~~G.S. 126-4(9)~~; 126-4(9); 126-34.02;

12 Temporary Adoption Eff. May 23, 2014.

13

1 25 NCAC 01J .1316 [proposed as Rule .1312] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1312~~ **25 NCAC 01J .1316 REMEDIES FOR PROCEDURAL VIOLATIONS**

4 (a) Failure to give written notice of applicable appeal rights in connection with a dismissal, demotion or suspension
5 without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the
6 time in which to file an appeal. The extension shall be from the date of the procedural violation to no more than 30
7 calendar days from the date the employee is given written notice of applicable appeal rights.

8 (b) Failure to give specific reasons for dismissal, demotion or suspension without pay shall be deemed a procedural
9 violation. Back pay, attorney's fees, or both may be awarded for such a violation. Back pay or attorney's fees, or
10 both, may be awarded for such a period of time as is appropriate under the law, considering all the circumstances.

11 (c) Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. Further, the remedy for
12 this violation shall require that the employee be granted back pay from the date of the dismissal until a date
13 determined appropriate in light of the purpose of pre-dismissal conferences, which is to provide notice to the
14 employee and an opportunity to be heard. Reinstatement shall not be a remedy for lack of a pre-dismissal
15 conference.

16

17 *History Note: Authority G.S. 126-4(9); 126-34.02; 126-35;*

18 *Temporary Adoption Eff. May 23, 2014.*

1 25 NCAC 01J .1317 [proposed as Rule .1315] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1315~~ **25 NCAC 01J .1311 REMEDIES: SALARY ADJUSTMENTS**

4 (a) No department, agency or institution may use within-grade or within-range salary adjustments as a method of
5 resolving any grievance, contested case or lawsuit without advance notice to the Office of State Human Resources
6 and the specific, written approval of the State Human Resources Director.

7 (b) Any within-grade or within-range salary adjustment proposed to be approved by the State Human Resources
8 Director must be in compliance with existing salary administration policies (see 25 NCAC 01D .0100 et seq) or shall
9 have prior approval as an exception to or waiver from such policies in accordance with 25 NCAC 01A .0104.

10

11 *History Note:* Authority G.S. 126-4(2); S.L. 2013-382;

12 Temporary Adoption Eff. May 23, 2014.

13

1 25 NCAC 01J .1318 [originally proposed as Rule .1309] as originally published on the OAH website on October 28,
2 2013, is adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1309~~ **25 NCAC 01J .1318** CERTAIN REMEDIES NOT AVAILABLE

4 Punitive, exemplary and other such damages are not available as remedies in appeals brought under Chapter 126 of
5 the North Carolina General Statutes.

6

7 *History Note:* Authority G.S. 126-4(9); 126-34.02.

8 Temporary adoption Eff. May 23, 2014.

9

1 25 NCAC 01J .1319 [proposed as Rule .1305] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1305~~ 25 NCAC 01J .1319 **SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE**
4 **AWARDED**

5 For grievances filed on or after August 21, 2013, attorney's fees may be awarded only in the following situations:

- 6 (1) the grievant is reinstated; or
7 (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether
8 the grievant has been reinstated; or
9 (3) the grievant prevails in a whistleblower grievance.

10

11 *History Note: Authority G.S. 126-4(11); 126-34.02;*

12 *Temporary Adoption Eff. May 23, 2014.*

13

1 25 NCAC 01J .1320 [proposed as Rule .1306] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1306~~ 25 NCAC 01J .1320 **ATTORNEY'S FEES MAY BE AWARDED AS A RESULT OF A**
4 **SETTLEMENT**

5 Attorney's fees may be paid as the result of a settlement in the grievance procedure, providing such fees are
6 explicitly incorporated as a part of a ~~written~~ settlement agreement signed by both parties. Attorney's fees shall not
7 be awarded as the result of a settlement unless such fees are a specific part of the written settlement agreement.

8

9 *History Note:* Authority ~~G.S. 126-4(11)~~; 126-4(11); 126-34.01; 126-34.02;

10 Temporary Adoption Eff. May 23, 2014.

11

1 25 NCAC 01J .1321 [proposed as Rule 1317] as originally published on the OAH website on October 28, 2013, is
2 adopted under temporary procedures with changes as follows:

3 ~~25 NCAC 01J .1317~~ 25 NCAC 01J .1321 ESTABLISHMENT OF REASONABLE ATTORNEY FEES BY
4 THE COMMISSION

5 This Rule applies to contested cases commenced on or after August 21, 2013.

6 (1) Reimbursement of legal and witnesses' fees incurred in connection with appeal where an employee
7 is reinstated or receives back pay may be ordered as follows:

8 (a) ~~Attorney~~ attorney fees at a reasonable hourly rate based on the prevailing market rate but
9 at a rate no higher than the fee agreement between the parties;

10 (b) ~~Law~~ law Clerk, Paralegal, or Legal Assistant fees at a reasonable hourly rate based on
11 the prevailing market rate but at a rate no higher than the fee agreement between the
12 parties; and

13 (c) ~~Travel~~ travel time at a maximum rate of one-half the applicable hourly attorney or legal
14 support staff fee rate.

15 (2) Fees shall be documented by an itemized, per activity, accounting of the hours expended, in
16 addition to a copy of the fee agreement between the parties and any relevant receipts or other
17 documentation of prior payment.

18
19 *History Note:* Authority G.S. 126-4(6),(9); 126-34.02;
20 Temporary Adoption Eff. May 23, 2014.
21

1 25 NCAC 01J .1402, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1402 FLEXIBILITY**

5

6 *History Note:* Authority G.S. 126-4(9); 126-4(10); S. L. 2013-382;

7 *Eff. March 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

1 25 NCAC 01J .1403, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1403 INFORMAL MEETING WITH SUPERVISOR**

5

6 *History Note:* *Authority G.S. 126-4(9); 126-4(10); S. L. 2013-382;*

7

Eff. March 1, 2005;

8

Temporary Repeal Eff. May 23, 2014.

9

1 25 NCAC 01J .1404, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1404 MEDIATION PROCEDURE**

5

6 *History Note:* *Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-34; 126-35; S. L. 2013-382;*

7 *Eff. March 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

9

1 25 NCAC 01J .1405, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1405 CONCLUSION OF MEDIATION**

5

6 *History Note:* Authority G.S. 126-4(9); 126-4(10); 126-4(17); S. L. 2013-382;

7 *Eff. March 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

9

1 25 NCAC 01J .1406, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1406 LIMITATIONS ON A MEDIATION AGREEMENT**

5

6 *History Note:* *Authority G.S. 126-4(9); 126-4(10); S. L. 2013-382;*

7 *Eff. March 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

9

1 25 NCAC 01J .1407, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1407 POST MEDIATION**

5

6 *History Note: Authority G.S. 126-4(6); 126-4(7); 126-4(10); 126-34; S. L. 2013-382;*

7

Eff. April 1, 2005;

8

Temporary Repeal Eff. May 23, 2014.

1 25 NCAC 01J .1408, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1408 EMPLOYEE RESPONSIBILITIES FOR MEDIATION**

5

6 *History Note: Authority G.S. 126-4(9); S. L. 2013-382;*

7 *Eff. April 1, 2005*

8 *Temporary Repeal Eff. May 23, 2014.*

1 25 NCAC 01J .1409, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1409 AGENCY RESPONSIBILITIES FOR MEDIATION**

5

6 *History Note: Authority G.S. 126-4(6); 126-4(9); 126-4(10); S. L. 2013-382;*

7 *Eff. April 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

1 25 NCAC 01J .1410, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3

4 **25 NCAC 01J .1410 OFFICE OF STATE PERSONNEL RESPONSIBILITIES**

5

6 *History Note: Authority G.S. 126-4(9); 126-4(10); S. L. 2013-382;*

7 *Eff. April 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

1 25 NCAC 01J .1411, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3 **25 NCAC 01J .1411 AGENCY PROCEDURAL REQUIREMENTS FOR EMPLOYEE MEDIATION**
4 **AND GRIEVANCE POLICY**

5

6 *History Note: Authority G.S. 126-4(9); 126-4(10); 126-34.1(a); S.L. 2013-382;*

7 *Eff. March 1, 2005;*

8 *Temporary Repeal Eff. May 23, 2014.*

9

1 25 NCAC 01J .1412, as originally published on the OAH website on October 28, 2013, is repealed under temporary
2 procedures as follows:

3 **25 NCAC 01J .1412 OFFICE OF STATE PERSONNEL RESPONSIBILITIES FOR EMPLOYEE**
4 **MEDIATION AND GRIEVANCE PROCESS**

5

6 *History Note: Authority G.S. 126-4(9); 126-4(10); S.L. 2013-382;*

7 *Eff. March 1, 2005; ;*

8 *Temporary Repeal Eff. May 23, 2014.*

9