TITLE 25 – OFFICE OF State human resources

***Notice*** *is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rules cited as 25 NCAC 01E .0210, .0704, .0705; 01I .1702, .1805, .1902, .1903, .1905, .2003, .2302, .2303, .2304, .2305, .2306, .2307 and .2310, and repeal the rule cited as 25 NCAC 01I .2105.*

***NOTE:*** *Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: http://www.ncoah.com.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** *https://oshr.nc.gov/about-oshr/state-hr-commission/proposed-rulemaking*

**Proposed Effective Date:** *April 1, 2019*

**Public Hearing**:

**Date:** *January 3, 2019*

**Time:** *2:00 p.m.*

**Location:** *Office of State Human Resources, Department of Administration, 116 Jones Street, Raleigh, NC 27603*

**Reason for Proposed Action:**

***25 NCAC 01E .0210 - Separation****: Payment of Vacation Leave - is amended to align with 25 NCAC 01I .2005 regarding vacation and sick leave accumulated during first twelve months of workers' compensation leave and bonus leave granted at any time during leave when employee is separated and excess vacation leave over 240 hours maximum if employee returns to permanent duty after workers' compensation leave.*

***25 NCAC 01E .0704 - Coverage*** *- is amended to define what State employees and other person shall be covered under the State's self-insured workers' compensation program and deleting language regarding employer statutory duties of handling work-related injuries under G.S. Chapter 97. 25 NCAC 01E .0705 - Administration - is amended to clarify the Office of State Human Resources' responsibility to administer the State's self-insured workers' compensation program including contracting with vendors for workers' compensation claims services, vendor contracts monitoring, acting as liaison between vendors and State agencies, monitoring claim status, issuing claim handling guidelines, and providing training materials for use in State agencies.*

***25 NCAC 01I .1702 - Employment of Relatives*** *- is amended to align with the North Carolina Administrative Code at 25 NCAC .01H .0641.*

***25 NCAC 01I .1805 - Provisions for Tentative Temporary Classification*** *- is amended to remove outdated "flat-rate" language to align with the North Carolina Administrative Code.*

***25 NCAC 01I .1902 - Posting and Announcement of Vacancies*** *- is amended to change posting from 7 work days to 7 calendar days pursuant to best practices, update the NC Works name and replacing shall with may as to posting with NC Works, GS 96 -29 applies only to state agencies.*

***25 NCAC 01I .1903 - Applicant Information and Application****, is amended to remove NC Works posting information and update language to match practice as indicated by minor edits.*

***25 NCAC 01I .1905 - Selection*** *is amended to align with state admin codes: H .0634, H .0635.*

***25 NCAC 01I .2003 - Promotion*** *is amended to align with state admin code (where applicable): D .0301 and comply with G.S. 126 probationary period language and deletes outdated language.*

***25 NCAC 01I .2105 - Other Pay*** *- is deleted as it is no longer utilized.*

***25 NCAC 01I .2302 - Dismissal for Unsatisfactory Job Performance of Duties*** *- is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0605.*

***25 NCAC 01I .2303 - Dismissal for Grossly Inefficient Job Performance*** *- is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0606.*

***25 NCAC 01I .2304 - Dismissal for Unacceptable Personal Conduct*** *- is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0608.*

***25 NCAC 01I .2305 - Written Warning*** *- is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0610.*

***25 NCAC 01I .2306 - Disciplinary Suspension Without Pay*** *- is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0611.*

***25 NCAC 01I .2307 - Demotion****- is amended to align with North Carolina Administrative Code cross reference 25 NCAC 01J .0612.*

***25 NCAC 01I .2310 - Appeals*** *- is amended to align with North Carolina Administrative Code (a), (b) and (c) and (d) added for process clarity to provide consistent timeframe for FAD and updates language to comply with statute/practice.*

**Comments may be submitted to:** *Lars Nance, Office of State Human Resources, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4890, email lars.nance@nc.gov*

**Comment period ends:** *February 15, 2019*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

**[ ]  State funds affected**

**[ ]  Environmental permitting of DOT affected**

 **Analysis submitted to Board of Transportation**

**[ ]  Local funds affected**

**[ ]  Substantial economic impact (≥$1,000,000)**

**[ ]  Approved by OSBM**

**[x]  No fiscal note required by G.S. 150B-21.4**

Chapter 01 - Office of State Human Resources

SUBCHAPTER 01E ‑ EMPLOYEE BENEFITS

SECTION .0200 ‑ VACATION LEAVE

25 NCAC 01E .0210 SEPARATION: PAYMENT OF VACATION LEAVE

(a) The agency shall pay an employee in a lump sum for vacation leave only at the time of separation.

(b) When separated from state service due to resignation, dismissal, or death, an employee shall be paid in a lump sum for accumulated vacation leave not to exceed a maximum of 240 hours. The employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation.

(c) When separated from state service due to service retirement, early retirement, or reduction in force, an employee may, at the discretion of the employee's supervisor, elect to exhaust vacation leave after the last day of work but prior to the effective date of the separation. All benefits accrue while leave is being exhausted including holidays that occur during the period. Unused leave not exhausted shall be paid in a lump sum not to exceed 240 hours. An employee who was reduced in force and who had over 240 hours of vacation leave at the time of separation shall have the excess leave reinstated when reemployed within one year. The date of separation is as follows:

(1) If leave is exhausted, the last day of leave is the date of separation.

(2) If no leave is exhausted, the last day of work is the date of separation.

(d) If an employee separates and is overdrawn on leave, the employing agency shall deduct the value of the overdrawn leave from the final salary check.

(e) The employing agency shall make a retirement deduction from all leave payments.

(f) Receipt of lump sum leave payment and retirement benefit is not considered as dual compensation.

(g) In the case of a deceased employee, the employing agency shall make a payment for unpaid salary, leave, and travel, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, the employing agency must make a payment in accordance with the provisions of G.S. 28A‑25-6.

(h) In the case of an employee separated due to a workers' compensation injury pursuant to 25 NCAC 01C .2007, vacation and sick leave accumulated only during first 12 months of workers' compensation leave will be exhausted by lump sum payment, along with other unused vacation/bonus leave which was on hand at time of injury, as well as any bonus leave granted subsequently.

(i) If employee returns to permanent duty after workers' compensation leave, excess vacation leave over 240 hour maximum to be carried forward to next calendar year may be used after returning to work or carried on leave account until end of calendar year at which time any excess vacation shall be converted to sick leave. If employee separates during period excess vacation is allowed, vacation leave exceeding 240 hours to be paid in lump sum may not exceed amount accumulated during first 12 months of workers' compensation leave.

History Note: Authority G.S. 28A‑25-6(a),(c); 126‑4;

Eff. February 1, 1976;

Amended Eff. April 1, 2019; December 1, 1988; January 1, 1993;

Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989;

Amended Eff. December 1, 2008; December 1, 2007; July 1, 1995; March 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

SECTION .0700 ‑ WORKER'S COMPENSATION LEAVE

25 NCAC 01E .0704 COVERAGE

All North Carolina State Government employees and officers of the state including elected officials, members of the General Assembly, and persons appointed to serve on a per diem, part-time or fee basis are covered under the State's self-insured workers' compensation program administered by the Office of State Human Resources. ~~North Carolina Workers' Compensation Act. Those covered include all employees and officers of the state including elected officials, members of the General Assembly, and persons appointed to serve on a per diem, part‑time or fee basis. Any employee who suffers an accidental injury or contracts an occupational disease within the meaning of the Workers' Compensation Act is entitled to benefits provided by the Act. The employee is entitled to medical benefits and compensation for time lost from work and any disability which results from the injury. The state has a "self‑insured" program and expenditures are paid from current operating budgets.~~

History Note: Authority G.S. 126‑4;

Eff. November 1, 1987;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, ~~2016.~~ 2016;

Amended Eff. April 1, 2019.

25 NCAC 01E .0705 ADMINISTRATION

(a) ~~Each State agency~~ The Office of State Human Resources shall administer a self-insured workers' compensation program for workers' compensation claims arising in State agencies. ~~which may include third party administration of claims. The agency shall ensure the employee of the benefits provided by the Workers' Compensation Act and control costs related to on-the-job injuries and illnesses.~~

(b) The Office of State Human Resources self-insured workers' compensation program for State agencies shall: ~~shall measure and evaluate the effectiveness of the workers' compensation program at each agency and recommend changes to achieve optimum results and ensure consistent application of coverage and compensation. It shall maintain contract oversight, monitoring and evaluation of the effectiveness of third party administration of claims, and act as intermediary between the third party administrator and the State. It shall maintain a statistical database summarizing a statewide analysis of total expenditures and injuries, and develop training and educational materials for use in training programs for the agencies.~~

(1) Contract with vendor(s) for services for workers' compensation claims arising in State agencies.

(2) Act as intermediary between vendor(s) and State agencies.

(3) Monitor contracted vendor(s) performance.

(c) Each State agency shall pay for workers' compensation expenditures from current operating budgets.

(d) The Office of State Human Resources shall:

(1) Monitor status of workers' compensation claims arising in State agencies.

(2) Issue claim handling guidelines for workers' compensation claims arising in State agencies.

(3) Issue workers' compensation related educational materials for use in State agencies.

History Note: Authority G.S. 126-4; 143-580; 143-581; 143-582; 143-583.

Eff. November 1, 1987;

Amended Eff. April 1, 2019; October 1, 2004; April 1, 2001; August 1, 1998; September 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

SUBCHAPTER 01I ‑ SERVICE TO LOCAL GOVERNMENT

SECTION .1700 ‑ LOCAL GOVERNMENT EMPLOYMENT POLICIES

25 NCAC 01I .1702 EMPLOYMENT OF RELATIVES

~~(a) The employment of close relatives within the same department or work unit of a local government agency subject to G.S. Chapter 126 is to be avoided unless significant recruitment difficulties exist. If there are fewer than three other available eligibles for a vacancy and it is necessary for relatives to be considered for employment or if two individuals are already employed and marry, the following will apply:~~

~~Two members of an immediate family shall not be employed within the same department or work unit of a local government agency subject to G.S. Chapter 126 if such employment will result in one supervising a member of his immediate family or where one member occupies a position which has influence over the other's employment, promotion, salary administration and other related management or personnel considerations.~~

~~(b) The term "immediate family" shall be understood to refer to that degree of closeness of relationship which would suggest that problems might be created within the work unit or that the public's philosophy of fair play in providing equal opportunity for employment to all qualified individuals would be violated. This would include wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step, half and in‑law relationships as appropriate based on the above listing.~~

Members of an immediate family shall not be employed within the same agency if the employment results in one member supervising another member of the employee's immediate family, or if one member will occupy a position that has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This includes employment on a permanent, temporary, or contractual basis. The term "immediate family" includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is are the step-, half- and in-law relationships based on the listing in this Rule. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position that requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

History Note: Authority G.S. 126‑4;

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, ~~2016.~~ 2016;

Amended Eff. April 1, 2019.

SECTION .1800 ‑ GENERAL PROVISIONS

25 NCAC 01I .1805 ~~TENTATIVE AND FLAT‑RATE~~ PROVISIONS FOR TENTATIVE TEMPORARY CLASSIFICATION

The State Human Resources Director is authorized to establish temporary classifications with tentative pay grades ~~or flat-rate salaries~~ when insufficient information is available to make permanent classification and pay recommendations to the State Human Resources Commission. When sufficient information is available, the Director will make a recommendation to the State Human Resources Commission which will incorporate the temporary class and pay into the permanent classification plan and pay plan. Such temporary ~~classes,~~ classes and tentative pay grades ~~and flat-rate salaries~~ shall be administered according to all applicable rules and regulations approved by the State Human Resources Commission.

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, ~~2016.~~ 2016;

Amended Eff. April 1, 2019.

SECTION .1900 ‑ RECRUITMENT AND SELECTION

25 NCAC 01I .1902 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions to be filled will be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply.

(b) Vacancies which will be filled from within the agency workforce shall have an application period of not less than seven calendar days. These vacancies will be prominently posted in an area known to ~~employees, and~~ employees and will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum training and experience standard, and contact person for each position to be filled. An exception to this posting requirement will be permissible where a formal, pre‑existing "understudy" arrangement has been established by management.

(c) Any vacancy for which an agency wishes to consider outside applicants or outside applicants concurrently with the internal workforce ~~shall~~ may be listed with the local ~~Job Service Office of the Employment Security Commission~~ NCWorks Career Center of the Division of Employment Security. Listings will include the appropriate announcement information and vacancies so listed shall have an application period of not less than seven ~~work~~ calendar days.

(d) If an agency makes an effort to fill a vacancy from within, and is unsuccessful, the listing with the ~~Employment Security Commission~~ Division of Employment Security ~~would~~ may take place when the decision is made to recruit outside. A vacancy which an agency will not fill for any reason shall not be listed; if conditions change, it shall then be treated as a new vacancy.

History Note: Authority G.S. 126‑4;

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, ~~2016.~~ 2016;

Amended Eff. April 1, 2019.

25 NCAC 01I .1903 APPLICANT INFORMATION AND APPLICATION

~~(a) The primary source of public information and referral for vacancies in subject local government programs is the Employment Security Commission. Interested persons may contact their local ESC Job Service Office. Other sources may also be designated by local departments and agencies.~~

(a)~~(b)~~ Persons applying for a local vacancy must complete and submit the official application form designated by the hiring authority.  ~~authority and approved by the reviewing state agency.~~ It is not necessary for local agencies to accept official application forms in the absence of an actual vacancy under active recruitment.

(b)~~(c)~~ Each agency shall be responsible for evaluating the accuracy of statements made in an application and may seek job‑related evidence of the applicant's suitability for employment.

(c)~~(d)~~ An applicant may be disqualified if ~~he:~~ they:

(1) lack ~~lacks~~ any of the preliminary qualifications established for the class of the position being applied for;

(2) ~~has~~ have made a false statement of material fact in the application process;

(3) ~~fails~~ failed to submit ~~an~~ a completed application ~~correctly or~~ within the prescribed time limits;

(4) lack ~~lacks~~ the physical or mental ability to perform the essential duties of the position even with reasonable accommodation.

History Note: Authority G.S. 126‑4;

Eff. September 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, ~~2016.~~ 2016;

Amended Eff. April 1, 2019.

25 NCAC 01I .1905 SELECTION

~~(a) Selection of Applicants:~~

~~(1)~~ ~~The selection of applicants for appointment will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be best qualified and hiring authorities must shall reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.~~

~~(2)~~ ~~Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. In any vacancy instance, the same selection process will be used consistently with all the applicants. Equal employment consideration will be afforded. Reference checking and other means of verifying applicant qualifications may be employed as necessary. It should be recognized and explained to persons applicants selected that the probationary period is a required extension of the selection process.~~

~~(b) Minimum Qualifications:~~

~~(1)~~ ~~The employee or applicant must possess at least the training and experience requirements, or their minimum equivalent, set forth in the state class specification for the class of the position to be filled. This shall apply in new appointments, promotions, demotions, transfers, and reinstatements.~~

~~(2)~~ ~~The training and experience requirements serve as indicators of the possession of the skills, knowledges, and abilities which have been shown through job evaluation to be important to successful performance, and as a guide to primary sources of recruitment. It is recognized that a specific quantity of formal education or numbers of years of experience does not always guarantee possession of the necessary skills, knowledges, and abilities for every position. Qualifications necessary to perform successfully may be attained in a variety of combinations. In evaluating qualifications, reasonable substitutions of formal education and job-related experience, one for the other, will be made upon request by the local appointing authority to the appropriate state review agency.~~

~~(3)~~ ~~Management is responsible for determining the vacancy-specific qualifications that are an addition to minimum class standards. Such qualification requirements must bear a logical and job-related relationship to the minimum standard. Management shall be accountable for the adverse effects resulting from the use of qualification standards that are +unreasonably construed.~~

~~(4)~~ ~~The review authority for qualifications in questionable selection situations rests first with the respective Regional Personnel Office and Central Office of the Department of Human Resources, or in the state Office of Crime Control and Public Safety, and finally with the Office of State Human Resources.~~

(a) Selection of Applicants:

(1) Agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence.

(2) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications including selective criteria. "Selective criteria" are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants. The individual selected for the position shall be from among the most qualified applicants.

(3) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.

(4) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most qualified pool.

(b) Minimum Qualifications:

(1) The employee or applicant must possess at least the minimum qualifications set forth in the class specification of the vacancy being filled. Additional minimum qualifications, if any, included on the specific vacancy announcement must also be met. The additional qualifications shall have a documented business need. Qualifications include training, experience, competencies and knowledge, skills and abilities. The minimum qualifications on the vacancy announcement shall bear a direct and logical relationship to the minimums on the class specification, class administration guidelines developed by the Office of State Human Resources, and the specific position description. This requirement shall apply in new appointments, promotions, demotions or reassignments, transfers, and reinstatements.

(2) Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable substitutions of formal training and job-related experience, one for the other, may be made.

(3) Agency management is responsible for determining and defending the vacancy-specific qualifications that are in addition to minimum training and experience requirements. Such vacancy-specific qualifications shall bear a logical and job-related relationship to the minimum requirements.

(4) The Office of State Human Resources shall make the final determination as to whether the employee or applicant meets the minimum qualifications in questionable selection situations.

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, ~~2016.~~ 2016;

Amended Eff. April 1, 2019.

SECTION .2000 ‑ APPOINTMENT AND SEPARATION

25 NCAC 01I .2003 PROMOTION

(a) ~~A promotion is a change to a classification at a higher level~~. Promotion is an advancement from one position to another with a higher salary grade. ~~This may result from movement to another position or by the present position being reallocated to a higher classification as a result of increases in the level of duties and responsibilities.~~

(b) When it is practical and feasible, a vacancy should be filled by promotion of a qualified ~~permanent~~ employee. Selection for promotion should be based upon demonstrated capacity, and quality of services. If promotion results from movement to another position, the candidate must possess the minimum training and experience for the class. If the promotion results from the present position being reallocated to a higher classification, the employee may be promoted by waiver of the stated training and experience requirements. ~~requirements if he has satisfactorily performed for a minimum of three months prior to the reallocation.~~

(c) An employee in a work‑against appointment cannot be promoted, upon reallocation of his position, by waiver of training and experience requirements until he has served at least one year in the work‑against class or until qualified for the new class. The incumbent in a work‑against situation must be promoted as soon as he meets the qualifications for the higher class or the position must be reallocated to the lower class.

(d) An employee in probationary or trainee status may be promoted to another position in a higher classification if the person is qualified for such an appointment. The employee's probationary period will continue ~~until performance meets the required standard, as certified by the appointing authority, except that in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status).~~ for the duration defined in G.S. 126-1.1.

(e) An employee in probationary status occupying a position at the time it is reallocated upward may be promoted to the new class if the person possesses the minimum training and experience requirements; if not qualified the employee shall remain at the former level working against the higher classification or be separated. If promoted during the probationary period, the employee will continue in probationary status until ~~performance meets the required standard, but in no case shall the duration be longer than nine months after~~ the duration defined in G.S. 126-1.1 has been satisfied, beginning with the initial probationary appointment. ~~(unless the person is in trainee status).~~

History Note: Authority G.S. 126‑4;

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, ~~2016~~ 2016;

Amended Eff. April 1, 2019.

SECTION .2100 ‑ COMPENSATION

25 NCAC 01I .2105 OTHER PAY

History Note: Authority G.S. 126‑4; 126-5; 126-9;

~~Eff. August 3, 1992;~~

~~Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.~~

SECTION .2300 ‑ DISCIPLINARY ACTION: SUSPENSION, DISMISSAL AND APPEALS

25 Ncac 01i .2302 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES

(a) Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or agency.

(b) The intent of this Section is to assist and promote improved employee performance, rather than to punish. This Rule covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.

(c) In order to be dismissed for a current incident of unsatisfactory job performance, an employee must first receive at least two prior disciplinary actions: First, one or more written warnings, followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.

(d) Prior to the decision to dismiss an employee, the agency director or designated management representative must conduct a ~~pre-dismissal~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of the Section.

(e) An employee who is dismissed must receive written notice of the specific reasons for the dismissal as well as notice of any applicable appeal rights.

(f) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432.~~ 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4; 126-35;

Eff. August 3, 1992;

Amended Eff. April 1, 2019; April 1, 2001; December 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.

25 ncac 01i .2303 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE

(a) ~~Gross Inefficiency (Grossly Inefficient Job Performance)~~ Grossly Inefficient Job Performance occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency and that failure results in:

(1) ~~the creation of the potential for death or serious harm bodily injury to a client(s), an employee(s), members of the public or to a person(s)~~ death or serious harm or the creation of the potential for death or serious harm, to a client(s), an employee(s), members of the public or to a person(s) over whom the employee has responsibility; or

(2) the loss of or damage to agency property or funds that result in a serious impact on the agency or work unit.

(b) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(c) Prior to dismissal of an employee with ~~permanent~~ career status on the basis of grossly inefficient job performance, there shall be a ~~pre-dismissal~~ pre-disciplinary conference between the employee and the agency director or designated management representative. This conference shall be held in accordance with the provisions of 25 NCAC 01I .2308.

(d) Dismissal for grossly inefficient job performance requires written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432.~~ 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4(7a);

Eff. August 3, 1992;

Amended Eff. April 1, 2019; April 1, 2001; December 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.

25 ncac 01i .2304 DISMISSAL FOR UNACCEPTABLE PERSONAL CONDUCT

(a) Employees may be dismissed for a current incident of unacceptable personal ~~conduct.~~ conduct without any prior active disciplinary actions.

(b) Unacceptable personal conduct is:

(1) conduct on or off the job that is reasonably related to the employee's job duties and responsibilities for which no reasonable person should expect to receive prior warning; ~~or~~

(2) ~~job related~~ conduct which constitutes violation of state or federal law; ~~or~~

(3) conviction of a felony ~~or an offense involving moral turpitude~~ that is detrimental to or impacts the employee's service to the agency; ~~or~~

(4) the willful violation of known or written work rules; ~~or~~

(5) conduct unbecoming an employee that is detrimental to the agency's service; ~~or~~

(6) the abuse of client(s), patient(s), ~~student(s)~~ or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the agency; ~~or~~

(7) falsification of an employment application or other employment documentation; or

(8) insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning; ~~or~~

(9) absence from work after all authorized leave credits and benefits have been ~~exhausted.~~ exhausted;

(10) failure to maintain or obtain necessary credentials or certifications.

(c) Prior to dismissal of an employee with ~~permanent~~ career status on the basis of unacceptable personal conduct, there shall be a ~~pre-dismissal~~ pre-disciplinary conference between the employee and the agency director or designated management representative. This pre-disciplinary conference shall be held in accordance with the provisions of 25 NCAC 01I .2308.

(d) Dismissals for unacceptable ~~job performance~~ personal conduct require written notification to the employee. Such written notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 01B .0432.~~ 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

History Note: Authority G.S. 126-4; ~~126-34;~~

Eff. August 3, 1992;

Amended Eff. April 1, 2019; April 1, 2001; December 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.

25 NCAC 01I .2305 WRITTEN WARNING

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and ~~acceptable standards of personal conduct.~~ assure that employees do not engage in unacceptable personal conduct. All types of performance‑related job inadequacies may constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work‑related or non‑work‑related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee ~~must~~ shall receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning ~~must:~~ shall:

(1) Inform the employee in writing that this is a written warning, and not some other non‑disciplinary process such as counseling;

(2) Inform the employee of the specific issues that are the basis for the warning;

(3) Tell the employee what specific ~~improvements~~ corrections, if applicable, must be made to address these specific issues;

(4) Tell the employee the time frame allowed for making the required ~~improvements/corrections.~~ corrections. ~~Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance.~~ Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct;

(5) Tell the employee the consequences of failing to make the required ~~improvements/corrections.~~ corrections; and

(6) Tell the employee of any appeal rights provided by agency policy.

(b) A written warning ~~must~~ shall be issued in accordance with the procedural requirements of this Section. ~~Section, including any applicable appeal rights.~~

History Note: Authority G.S. 126‑4;

Eff. August 3, 1992;

Amended Eff. April 1, 2019; December 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.

25 ncac 01i .2306 DISCIPLINARY SUSPENSION WITHOUT PAY

(a) An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or without any prior warning for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without ~~pay~~ pay, the agency director or designated ~~a~~ management representative shall conduct a ~~pre-suspension~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

(b) An agency ~~may impose~~ has the option of imposing the same periods of disciplinary suspension without pay ~~for~~ upon all employees as long as the period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

History Note: Authority G.S. 126-4(6); 126-35;

Eff. August 3, 1992;

Amended Eff. April 1, 2019; April 1, 2001; December 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.

25 ncac 01i .2307 DEMOTION

(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

~~(b)~~(1) Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.

~~(c)~~(2) Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.

~~(d)~~(3) Unacceptable Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.

~~(e)~~(4) An employee who is demoted ~~must~~ shall receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

~~(f)~~(b) Disciplinary demotions may be accomplished in three ways:

(1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary range for the new lower pay ~~grade;~~ grade; or

(2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary rate for the new lower pay grade; or

(3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade. ~~grade or the special entry rate, if in effect.~~

~~(g)~~(c) Prior to the decision to demote an employee for disciplinary reasons, the agency director or ~~designated~~ a management representative ~~must~~ shall conduct a ~~pre-demotion~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of this Section.

History Note: Authority G.S. 126-4;

Eff. August 3, 1992;

Amended Eff. April 1, 2019; April 1, 2001; December 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.

25 NCAC 01I .2310 APPEALS

(a) An employee with ~~permanent~~ career status as defined in G.S. 126-1.1 who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency ~~or county~~ grievance procedure. ~~procedure whichever is applicable.~~ If an employee does not appeal his demotion, suspension or dismissal through the agency grievance procedure within 15 calendar days, then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-35. ~~Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days in which to take remedial action, if any, unless the agency has waived the 60-day period, and the employee has acknowledged such waiver. An appeal to the State Human Resources Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.~~

~~(b) Grievances which allege discrimination not including unlawful workplace harassment may at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Human Resources Commission (SHRC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SHRC. A direct appeal to the SHRC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.~~

(b) If an employee appeals his demotion, suspension or dismissal through the agency grievance procedure, then the ~~initial dismissal letter~~ written notice of such action shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee**'**s appeal through the agency grievance procedure.

~~(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36, and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after written notification of remedial action, if any, taken by the agency must be dismissed. (a) An A An career state employee with permanent status with career status as defined in N. C. G. S. 126 - 1.1 who has been demoted, suspended without pay as a disciplinary measure or dismissed shall have 15 calendar days from the date of his or her receipt of written notice of such action to file an appeal with his or her agency or county grievance procedure, whichever is applicable. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days in which to take remedial action, if any, unless the agency has waived the 60-day period, and the employee has acknowledged such waiver. An appeal to the State Human Resources Commission Office of Administrative Hearings of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.~~

(c) Grievances that allege discrimination, harassment or retaliation shall follow the agency grievance procedure. Employees who do not follow the agency grievance procedure shall have no right to file a contested case with the Office of Administrative Hearings.

(d) If the employee has completed the agency grievance process and is not satisfied with the Final Agency Decision, or is unable to obtain a final agency decision within 90 days from the date the grievance was filed, the employee may file a Petition for Contested Case Hearing in the Office of Administrative Hearings. A Petition for Contested Case Hearing must be filed within 30 calendar days after the grievant receives the final agency decision.

History Note: Authority G.S. 126-35; ~~126-36; 126-38;~~ 150B-23; 150B-36;

Eff. December 1, 1995;

Amended Eff. April 1, 2019; July 18, 2002;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.