This document provides guidance for submitting settlement agreements, mediation agreements and resolutions of contested cases or court actions involving disputes arising out of the State Human Resources Act (Chapter 126 of the North Carolina General Statutes) and the policies and rules of the State Human Resources Commission (SHRC). This document should be used as a reference guide as all potential scenarios are not addressed. Case-specific guidance is available by contacting the Office of State Human Resources (OSHR), Employee Relations Division.

Advisory Note:
These guidelines may not apply to settlements that resolve claims under other State or Federal laws, and may require either a separate settlement agreement for the terms that do not meet these guidelines or an exception from the State Human Resources Director.

Settlements/Agreements that require OSHR approval

SHRC rules require OSHR approval of mediation agreements and settlements of grievances or litigation arising under the State Human Resources Act, which also require as an element of the settlement either:

- Processing of “personnel forms” for any reason other than substitution of a resignation for a dismissal. This includes back pay, front pay, promotion, reinstatement, reallocation, in-range salary adjustment, etc.

or

- Granting of an exception to existing SHRC policy.

Settlement terms that will require additional review

- A lump sum payment that is characterized as front pay (25 NCAC 01J .1307).

- A lump sum payment for medical expenses that should have been covered either by COBRA (if the employee elected to maintain such coverage), or by the employee’s health insurance coverage if provided by the State retroactively. The employee remains responsible for payment of the deductibles/co-payments for which the employee would have been responsible had the employee been employed at the time the expense was incurred.
Settlements/Agreements that do not require OSHR approval

The following settlement/mediation agreements do not require OSHR approval:

- Settlements that only involve the substitution of a resignation for a dismissal (with accompanying change to separation status in BEACON or other HRIS).
- Settlements of employment-related complaints or lawsuits that do not involve any issues covered by the State Human Resources Act (for example, settlements of EEOC charges, Title VII of the Civil Rights Act of 1964).
- Settlements that do not involve processing a personnel action such as shift changes, removal or substitution of material in personnel files, etc.

Settlement/Agreement provisions that will not be approved

Settlement/mediation agreements with any of the following provisions will not be approved:

- An agreement to pay the grievant for vacation or sick leave already used.
- Payments of “damages.” Punitive, exemplary and other such damages are not available as remedies in cases arising under Chapter 126 (25 NCAC 01J .1318).
- A provision that a settlement agreement will be kept confidential. Settlement agreements are public documents. OSHR will not approve a settlement agreement that includes a statement that the agreement will be kept confidential without qualification. Settlement agreements may provide that they will be kept confidential “to the extent allowed by law.”
- A payment that includes relief other than front pay, back pay, other omitted benefits or attorney’s fees in certain cases (25 NCAC 01J .1318).

Settlement/Agreement Approval Process

Documents required for the approval of settlement/mediation agreements include the following:

Settlement Agreements

- The original copy of the settlement agreement approved by an administrative law judge or other authorized level of judicial review, and
- The original copy of the signed PD-14 (Statement of Back Pay/Front Pay).
Settlement documents may be mailed to:

Pamela Taylor  
Employee Relations  
Office of State Human Resources  
1331 Mail Service Center  
Raleigh, NC  27699-1331  
pamela.d.taylor@nc.gov

Mediation Agreements and Settlements as a Result of Mediation Agreements

- The original copy of the mediation agreement

If the agreement involves payment of wages (back pay award, etc.) to the grievant, also include the following:

- The original copy of the signed PD-14 (Statement of Back Pay/Front Pay)

Mediation agreements and related settlement documents may be mailed to:

Windy Wills  
Employee Relations and Workforce Performance  
1331 Mail Service Center  
Raleigh, NC 27699-1331  
windy.wills@nc.gov

Settlement/Mediation agreement documents may also be hand-delivered to OSHR on the third floor of the Administration Building at 116 West Jones Street, Raleigh.
Form PD-14 - Statement of Back Pay/Front Pay

If a settlement/mediation agreement involves an award of back pay for a specific period of time, the agency/university must submit a PD-14, “Statement of Back Pay/Front Pay” to the OSHR Employee Relations Division. The PD-14 form may be downloaded by selecting the following link: PD-14 Form.

The PD-14 must be filled out completely with a notarized signature of the employee and the signature of the authorizing agency/university official. Forms that are not filled out completely, lack necessary signatures or lack appropriate notarization will be returned without action.

The PD-14 must be submitted with the exact and correct amounts to OSHR for OSBM review and approval. To ensure accuracy of the financial calculations on the PD-14, BEACON agencies, boards and commissions may confer with BEST Shared Services for a review of the financial calculations before submitting the form to OSHR for OSBM approval. Universities may use other applicable HRIS/payroll systems.

If there is a change in the financial calculations during any stage of the review and approval process, the agency/university must submit a revised PD-14. OSHR will coordinate the review and approval process with OSBM.

For agencies that use the BEACON HR/Payroll system, all personnel actions and system changes associated with the settlement of grievances will be handled by BEST Shared Services. BEST Shared Services will not process a settlement agreement that requires payment of wages without the documents listed below.

To process a settlement/mediation agreement that involves payment of wages (back pay award, etc.), the following documents must be submitted:

- A copy of the settlement/mediation agreement, approved by OSHR, an administrative law judge or other authorized level of judicial review.

- Copy of signed PD-14 (Statement of Back Pay/Front Pay) approved by OSBM.

A Settlement Checklist and Settlement Guide for submitting to BEST may be viewed on the Office of the State Controller's training website.

Back pay awards may involve coordination with the Teachers’ and State Employees’ Retirement System (TSERS) of the NC Department of the State Treasurer when retroactive service credit to the employee will result from the settlement agreement.
**Interim Earnings or Unemployment Insurance Compensation**

After the agency/university determines the gross amount of back pay due, the amount must be reduced by any interim earnings or Unemployment Insurance Compensation (UIC) received by the employee during the period of separation, disciplinary suspension without pay or demotion.

The employee must report and certify interim income or UIC received, or certify that no interim income or UIC was received. The agency/university should obtain confirmation in writing from the Department of Commerce, Division of Employment Security as to the amount of unemployment compensation or income received and whether income taxes or deductions were made from the UIC.

**Note:** Back pay is not reduced by interim earnings from approved secondary employment that the employee held prior to the disciplinary action.

**Note:** Back pay awards are subject to all of the usual deductions for State and Federal taxes.

**State Retirement Credit**

If the employee is being reinstated from separation as a part of the settlement/mediation agreement and back pay is being paid, contributions to the State Retirement System also need to be deducted from the back pay award and remitted to TSERS. The employing agency/university must contact TSERS as soon as an amount of back pay has been identified or negotiated so that the appropriate contributions, payments and service credit can be verified by TSERS.

If the parties desire to secure retirement service credit for the amount of time for which back pay is being paid, but no reinstatement is going to occur, the parties must contact the TSERS as soon as the amount of back pay has been identified or negotiated. OSHR cannot approve or enforce any settlement provisions involving the retirement system and the retirement system is not bound by an agreement that involves a matter only between the parties.

The following documents must be submitted to the Retirement System in order for cost calculations and service credit to be processed:

- A complete copy of the court order or settlement. (Page extracts in lieu of the documents in their entirety will result in rejection of the application.)

- A statement or letter signed by the authorized agency/university official that specifically states what action(s) the unit has taken as evidence of compliance with the court order or settlement agreement. This document must provide clear and convincing evidence that the aggrieved member is fully reinstated to his or her prior position, together with all
benefits, including back pay (retroactive to the date of suspension without pay, demotion, dismissal, etc.,) dependent upon the particular circumstances of each case.

- A completed PD-14 signed by the appropriate authorized agency/university official.

For additional information regarding retirement credit, contact nc.retirement@nctreasurer.com.

**Reinstatement from dismissal**

A settlement/mediation agreement involving dismissal may treat reinstatement in several different ways. For example, an employee may be reinstated effective the date the employee was originally separated. Alternatively, an employee may be reinstated at any date subsequent to the separation, including prospectively. The effective date of a reinstatement is a matter to be negotiated between the employee and the agency/university.

A retroactive reinstatement requires crediting vacation and sick leave that would have been earned during the interim, longevity pay, and any legislative salary increases.

If the employee was paid out for vacation leave, the vacation leave will not be reinstated. Any vacation leave in excess of 240 hours that was not paid out at separation must be reinstated.

The decision to allow the employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency/university. (The failure to allow such repurchase is not grievable.)

**Reversal of a demotion or a Disciplinary Suspension without pay**

A settlement/mediation agreement involving reversal of a demotion that involved a reduction in pay requires a PD-14, “Statement of Back Pay/Front Pay.” A reversal or reduction in the length of a disciplinary suspension without pay also requires a PD-14.