

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 .0311; and 01J .1306.

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, 2020

Public Hearing:

Date: January 7, 2020

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 .0311 Separation: Added reference in 25 NCAC 01E .0210 as exception to unused sick leave not being paid out when an employee is separated from state service.

25 NCAC 01J .1306 Back Pay: Revise and clarify the language of 01J .1306 (3) and (11)(g) to require only that the employee provide a sworn statement verifying gross interim income and unemployment compensation, and remove the requirement that the employee provide verification of gross earnings.

Comments may be submitted to: Christine Ryan, Office of State Human Resources, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (984) 236-0824; email Christine.Ryan@nc.gov

Comment period ends: February 14, 2020

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
 Local funds affected
 Substantial economic impact (\geq \$1,000,000)
 Approved by OSBM
 No fiscal note required

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0300 - SICK LEAVE

25 NCAC 01E .0311 SEPARATION

- (a) Unused sick leave is not paid when an employee separates from state ~~service~~ service except as provided in 25 NCAC 01E .0210.
(b) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. December 1, 2007; July 1, 1995; January 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016; 2016;
Amended Eff. _____.*

SUBCHAPTER 01J - EMPLOYEE RELATIONS

SECTION .1300 - EMPLOYEE APPEALS AND GRIEVANCE PROCESS

25 NCAC 01J .1306 BACK PAY

In grievances:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.

- (2) Full or partial back pay shall not be dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any gross interim earnings, except that interim earnings from employment that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due.
~~due if the unemployment insurance benefits were not taxed when received by the employee.~~
- (4) All applicable State and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment, including merit increments.
- (9) Back pay shall include any across-the-board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," and across-the-board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.
- (11) Back pay shall be applied for on the Office of State Human Resources form, available on the Office of State Human Resources website, www.oshr.nc.gov. The back pay application form requires the following information:
 - (a) agency or university name;
 - (b) division or department or school;
 - (c) employee name;
 - (d) employee social security number;
 - (e) position classification;
 - (f) position number; and
 - (g) a notarized sworn statement verifying the following information for a total earnings calculation:
 - (i) ~~gross earnings for back pay;~~
 - (ii)(i) gross interim income, not including secondary employment approved prior to adverse action; and
 - (iii)(ii) unemployment compensation. ~~compensation (untaxed).~~
- (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available employment following separation from State government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

*History Note: Authority G.S. 126-4(9); 126-34.01; 126 -34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018 .2018;
Amended Eff.*