



Newly Revised Administrative Rule 25 NCAC 01C.1007 Regarding Separations Effective Date: April 1, 2016

On March 17, 2016, the Rules Review Commission approved a revised rule addressing separation of state employees. The full text of the new rule is on page 2 of this document.

What this means for your agency

1. Employees unable to perform essential job duties due to a court order, loss of required credentials, loss of other required certification(s), or due to other extenuating circumstances **may be separated NOTWITHSTANDING any leave balances** after written notice.
2. Employees unable to perform essential job duties on workers' compensation leave **may be separated NOTWITHSTANDING any leave balances** after written notice when the employee has reached maximum medical improvement for the work related injury for which the employee is on workers' compensation leave of absence and the agency is unable to accommodate the employee's permanent work restrictions related to such injury, or 12 months after the date of the employee's work related injury, whichever comes first.
3. Agency required written notice to employee including "Pre Separation Letter" and "Letter of Separation" may be completed in as little as 20 days from the date the first letter is sent.

Problems Solved

- Agencies can more quickly fill positions of employees unable to perform essential job duties.
- Agencies save the cost of benefits of employees unable to perform essential job duties that cannot be legally separated because they have existing leave balances unless the employee resigns, retires, or is placed on Long Term Disability.
- Agencies are given a detailed description of the procedural due process required to separate employees under these specific circumstances.

Steps for Separation of Employee Pursuant to the New Separation Rule

1. Employee meets requirements for separation as outlined in 25 NCAC 01C .1007.
2. Agency sends employee written notice of proposed separation in Pre Separation Letter at least 15 calendar days prior to agency's planned date of separation. The letter must include:
 - a. Planned date of separation
 - b. Efforts undertaken to avoid separation
 - c. Why efforts were unsuccessful
 - d. Deadline for employee to respond in writing no less than 5 calendar days prior to agency's planned date of separation.
3. If agency and employee are unable to agree on terms of continued employment or employee does not respond to Pre Separation letter, agency sends employee written notice in Letter of Separation no earlier than 20 calendar days after Pre Separation letter is sent to employee. The letter must include:
 - a. Actual date of separation
 - b. Specific reasons for separation
 - c. Employee's right of appeal



25 NCAC 01C.1007 SEPARATION

- (a) An employee may be separated when:
- (1) the employee remains unavailable for work after all applicable leave credits and leave benefits have been exhausted and agency management does not grant leave without pay, as defined in 25 NCAC 01E .1101, if the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's condition;
 - (2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a court order, due to a loss of required credentials, due to a loss of other required certification, or due to other extenuating circumstances that renders the employee unable to perform the position's essential duties as set forth in the employee's job description or designated work schedule, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation; or
 - (3) notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is on workers' compensation leave of absence, and the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition, a separation may occur on the earliest of the following dates:
 - (i) after the employee has reached maximum medical improvement for the work related injury for which the employee is on workers' compensation leave of absence and the agency is unable to accommodate the employee's permanent work restrictions related to such injury; or
 - (ii) 12 months after the date of the employee's work related injury.
- (b) The employing agency shall send the employee written notice of the proposed separation in a Pre Separation Letter. The letter shall include the employing agency's planned date of separation, the efforts undertaken to avoid separation, and why the efforts were unsuccessful. This letter shall be sent to the employee at least 15 calendar days prior to the employing agency's planned date of separation. This letter shall include a deadline for the employee to respond in writing no less than five calendar days prior to the employing agency's planned date of separation.
- (c) If the agency and employee are unable to agree on terms of continued employment or the employee does not respond to the Pre Separation letter, the employing agency shall send the employee written notice in a Letter of Separation. The letter shall be sent no earlier than 20 calendar days after the Pre Separation letter is sent to the employee. The Letter of Separation shall state the actual date of separation, specific reasons for the separation and set forth the employee's right of appeal. Such a separation shall not be considered a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden shall be to prove that the employee was unavailable, that efforts were undertaken to avoid separation, and why the efforts were unsuccessful.
- (d) "Applicable leave credits and benefits" is defined as the sick, vacation, bonus, incentive, and compensatory leave that the employee may earn, but does not include short-term or long-term disability.

History Note
<i>Authority G.S. 126-4(7a); 126-35; Eff. November 1, 1989; Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003; Amended Eff. April 1, 2015; January 1, 2007; October 1, 2004; Readopted Eff. April 1, 2016.</i>