

## Separation

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**Policy**

Separation from State service occurs when an employee leaves the payroll for reasons listed below. (Policies stated below, except for leave policies, do not apply to employees described in "Appointment Ended.")

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**Resignation**

An employee may terminate services with the State by submitting a resignation to the appointing authority. Normally, it is expected that an employee will give at least two weeks notice prior to the last day of work. Unused vacation leave not to exceed 240 hours plus unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns within five years or it may be applied toward retirement if eligible to retire within five years.

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**Voluntary Resignation without Notice**

An employee who is absent from work and does not contact the employer for three consecutive scheduled workdays may be separated from employment as a voluntary resignation. A factor to be considered when determining whether the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact his or her employer.

Such separations as described above are voluntary separations from State employment and create no right of grievance or appeal.

## Separation (continued)

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Unused vacation leave not to exceed 240 hours plus unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns within five years or it may be applied toward retirement if eligible to retire within five years.

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### Separation Due to Unavailability

**Policy** - An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits have been exhausted and agency management does not grant a leave without pay, or does not extend a leave without pay period, for reasons deemed sufficient by the agency. Such reasons include, but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints, etc. Such a separation is an involuntary separation and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed.

#### Definitions:

- (a) Unavailability – (1) the employee's inability to return to all of his/her position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or (2) the employee and the agency cannot reach agreement on a return to work arrangement that meets both the operating needs of the agency and the employee's medical/health needs.
- (b) Applicable leave credits –the sick and/or vacation/bonus leave the employee chose to exhaust prior to going on leave without pay.

**Leave Balance** - When an employee is separated while on leave without pay, any unused vacation leave not to exceed 240 hours plus unused bonus leave shall be paid in a lump sum. Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns within five years or it may be applied toward retirement if eligible to retire within five years. When an employee is separated while in receipt of workers' compensation benefits, leave shall be administered in accordance with the Workers' Compensation Leave Policy.

## Separation (continued)

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**Notification Required** - Prior to separation, the employing agency shall notify the employee in writing of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause, as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful.

**Grievance/Appeal Rights** - Involuntary separation pursuant to the policy may be grieved or appealed. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause, as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable, that the agency considered the employee's proposed accommodations for the unavailability and were unable to make the proposed accommodations or other reasonable accommodations.

**Placement** - Agencies should make efforts to place an employee when the employee becomes available, if the employee desires, consistent with other employment priorities and rights. However, there is no mandatory requirement placed on an agency to secure an employee, separated under this policy, a position in any agency.

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### Retirement

An employee may retire when the employee is eligible and applies for retirement benefits from the Teachers' and State Employees' Retirement System or the Law Enforcement Officers' Benefit and Retirement Fund. Unused vacation, or any portion, may be exhausted and the remainder paid in a lump sum (up to 240 hours) along with bonus leave. Unused sick leave may be applied toward retirement.

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## Separation (continued)

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### Reduction in Force

An employee may be reduced in force for reasons of shortage of funds or work, abolishment of a position, or other material changes in duties or organization. Employees may elect, subject to approval by management, to exhaust vacation leave after their last day of work and be paid in a lump sum for the balance not to exceed 240 hours (plus bonus leave). If an employee had over 240 hours of vacation leave at the time of reduction in force, the excess leave shall be reinstated when reemployed within one year.

Employees separated due to reduction-in-force shall be informed that their sick leave shall be reinstated if employed in any agency within five years.

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### Dismissal

Dismissal is involuntary separation for cause in accordance with the provisions of the policy on Disciplinary Action, Suspension, and Dismissal. Unused vacation leave not to exceed 240 hours plus unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns within five years or it may be applied toward retirement if eligible to retire within five years.

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### Appointment Ended

An "Appointment Ended" separation occurs when an employee is terminated for reasons other than just cause from one of the following positions:

- exempt positions appointed by the Governor,
- policy/making positions,
- confidential assistants and secretaries, or
- chief deputy or chief administrative assistant.

These separations may occur whenever the Agency Head or the Governor determines that the services of the employee are no longer needed. Unused vacation leave not to exceed 240 hours plus unused bonus leave is paid in a lump sum. Payment shall not be

## Separation (continued)

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made for unused sick leave. It shall be reinstated if the employee returns within five years or it may be applied toward retirement if eligible to retire within five years.

Advisory Note: The Employment Security Commission has ruled that these employees are eligible for unemployment benefits. If the employee voluntarily resigns before the date the appointment ends, it will be called a "Resignation" and will be subject to ESC regulations dealing with voluntary separations.

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### Death

Payment for unpaid salary, unused vacation leave (not to exceed 240 hours plus unused bonus leave), and travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made to the Clerk of Superior Court of the county of the deceased employee's residence. Payment shall not be made for unused sick leave.

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### Separation Procedures

The last day of work or the day of death shall be the date separated, except in the following cases:

- (1) If an employee is exhausting vacation leave prior to retirement or reduction in force, the date separated shall be the ending date of leave.
- (2) If an employee is exhausting approved sick/vacation leave for medical reasons and resigns or dies before returning to work, the date separated shall be the date the employee resigns or dies. This is subject to the approval of the Agency HR office.
- (3) If an employee gives notice of a resignation and becomes ill, the employee may exhaust sick/vacation leave up until the date of the resignation. The date separated will be the date of resignation. This is subject to the approval of the Agency HR office.

It is important to know the correct reason for resignation or dismissal. For example, if an employee resigns for other employment, the reason should include (if known) whether the employee left for a higher salary, or other pertinent facts that led to the employee's decision to leave.

