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**MICHAEL F. EASLEY
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STATE PERSONNEL DIRECTOR**

MEMORANDUM

TO: Directors, Local Departments of Social Services
Directors, Local Departments of Public Health
Directors, Area Mental Health Authorities (LMEs)

FROM: Drake Maynard
HR Managing Partner/Local Government

DATE: September 7, 2007

SUBJECT: Career Status Defined for Local Government Employees

This session, the General Assembly passed, and the Governor signed into law on August 19, 2007, an amendment to the State Personnel Act that requires that local government employees subject to the State Personnel Act must work for 24 consecutive months before they gain a property interest that is protected by due process.

The law states:

§ 126-1.1. Career State employee defined.

For the purposes of this Chapter, unless the context clearly indicates otherwise, "career State employee" means a State employee or an employee of a local entity who is covered by this Chapter pursuant to G.S. 126-5(a)(2) who:

- (1) Is in a permanent position appointment; and
- (2) Has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the State Personnel Act for the immediate 24 preceding months." [Underlining indicates new language.]

A "local entity . . . covered by . . . 126-5(a)(2)" includes:

All employees of the following local entities:

- a. Area mental health, developmental disabilities, and substance abuse authorities.
- b. Local social services departments.
- c. County health departments and district health departments.
- d. Local emergency management agencies that receive federal grant-in-aid funds.

Persons who complete this 24 consecutive month service period have what is known as "career status."

This change divides your SPA employees into 2 groups: those who completed a probationary period on or before August 18, 2007 and those who complete a probationary period on or after August 19, 2007. The immediate practical effect is this:

For those persons who completed a probationary period with your agency ON OR BEFORE August 18, 2007, they have gained a property interest that is protected by due process.

For those persons who completed a probationary period with your agency ON OR AFTER August 19, 2007, they will have to be employed with your county for at least 24 consecutive months (measured from their original date of employment) before they gain a property interest that is protected by due process.

Persons in the first group will be covered by the disciplinary action and appeals policy in 25 NCAC 11.2300. They will, if demoted, suspended without pay or dismissed, need to have a pre-disciplinary conference, a written letter of discipline with specific reasons, written information about accessing your internal grievance procedure, and will be able to request a contested case hearing from OAH and a decision by the State Personnel Commission.

Persons in the second group will be covered by the disciplinary action and appeals policy in 25 NCAC 11.2300 **only** after they have served 24 consecutive months in a position in your county that is subject to the State Personnel Act. They will, if demoted, suspended without pay or dismissed, have the same rights as persons in the first group **only** after they have served 24 consecutive months in a position in your county that is subject to the State Personnel Act.

With this change, this might be a good time to review your internal, departmental grievance procedures. It is likely that a number of you give access to your internal grievance procedure based on completion of a probationary period. You may keep this practice, but if you do, you (and your employees) need to know that persons who do not have career status have only limited access to the Office of Administrative Hearings/State Personnel Commission. You may want to consider whether you want to limit access to your internal procedure to only those individuals with career status.

The legal effect of this statutory change is to extend the period of at-will employment for employees in the second group from whatever the length of your department's probationary period is to a period of 24 months. This means that these employees are not entitled to the protections of the disciplinary action policy in 25 NCAC 11.2300, nor are they entitled to access your department's grievance procedure or appeal to the State Personnel Commission (except in cases of prohibited discrimination.)

It does not affect the probationary period at all. What it does change is the probationary period to a device that may be of significance in salary administration or leave usage. Some counties provide a salary increase once an employee completes a probationary period. Some counties only allow employees to begin using earned, accumulated paid leave after they have completed a probationary period. This law will not change those policies.

Clearly, this raises a number of practical issues. A significant issue is how to handle transfers between county SPA agencies, such as a transfer from DSS to Public Health, within the same county. At the State level, once a person gains career status, it is lost only after a "break in service" occurs.

[A break in service is defined in State policy as being off the payroll (that is, not being a State employee, whether in pay status or in LWOP status) for more than 31 calendar days. There is no such a definition in the Administrative Code for local government.]

Since the law requires consecutive service in a position subject to the State Personnel Act, a transfer from one SPA county agency to another would not appear to trigger a break in service, especially since this is all within the employment of a single county.

Another significant issue is how to handle transfers between SPA agencies in different counties. It is my understanding that what occurs at the present time when an employee moves from one county to another (even if they leave County A on Friday and start work in County B the following Monday), is that the receiving County requires a new probationary period.

Following this practice, it would be logical to say that movement from one county to another would constitute a break in service and re-set the career status calendar. This would require a new or amended rule in the Administrative Code.

Another issue is how LWOP or unpaid FMLA would affect career status. Currently, LWOP does not affect a State employee's career status. It would seem prudent to follow that same practice with local government SPA employees as well.

In summary, the principal effect of this legislative change is to require an additional fifteen months or more (depending on the current length of your department's probationary period) before a new employee comes under the protection of the disciplinary and grievance policies found in 25 NCAC 1I, and the State Personnel Act. The Office of State Personnel will be working on making any necessary changes to the Administrative Code. Your input on this will be appreciated.