

Article 2.

Salaries, Promotions, and Leave of State Employees.

§ 126-7: Repealed. See editor's note.

§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force; Work First hiring; reorganization through reduction.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted in a place readily accessible to employees within at least the following:

- (1) The personnel office of the agency, department, or institution having the vacancy; and
- (2) The particular work unit of the agency, department, or institution having the vacancy.

If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall also be listed on a website maintained by the Office of State Human Resources for the purpose of informing current State employees and the public of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Human Resources to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Human Resources that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(b) No loss of funds shall be required as a precondition for a reduction in force. State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

(c) The State Human Resources Commission shall adopt rules governing the priority and salary rights of State employees separated from State employment as the result of reductions in force who accept a position in State government to provide that the employee shall be paid a salary no higher than the maximum of the salary grade of the position accepted.

(d) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(e) If a State employee subject to this section:

- (1) Applies for another position of State employment that would constitute a promotion; and
- (2) Has substantially equal qualifications as an applicant who is not a State employee;

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

(f) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:

- (1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and
- (2) Has substantially equal qualifications as any other applicant;

then within all State agencies, the State employee who has been notified of or separated due to a reduction in force shall receive priority consideration over all other applicants. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal.

(f1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force accepts or rejects an offer for a position of State employment that is equal to or higher than the position held or equal to or higher than the salary earned by the employee at the time of separation or notification, then the employee's acceptance or rejection of that offer shall satisfy and terminate the one-time, 12-month priority granted by subsection (f) of this section.

(f2) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force and who applies for a position equal to or higher than the position held by the employee at the time of separation or notification, but declines an interview for the position for which the employee applied, then the employee's rejection of an offer of the interview for the position shall satisfy and terminate the one-time, 12-month priority granted by subsection (f) of this section. The State Human Resources Commission shall adopt a policy to carry out this subsection.

(g) "Qualifications" within the meaning of subsection (e) of this section shall consist of:

- (1) Training or education;
- (2) Years of experience; and
- (3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for.

(h) Each State agency, department, and institution is encouraged to hire into State government employment qualified applicants who are current or former Work First Program participants.

(i) Each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States.

(j) Any department or office listed in G.S. 126-5(d)(1) or (2) and The University of North Carolina and its constituent institutions may reorganize and restructure its positions through a voluntary separation process, in accordance with a policy approved by the State Human Resources Commission and subject to funding and approval by the Office of State Budget and Management. (1987, c. 689, s. 2; 1991, c. 65, s. 4; c. 474, s. 1; 1995, c. 141, s. 9; c. 507, s. 7.20(a); 1997-443, s. 12.7(d); 2006-259, s. 23.1(a); 2011-145, s. 29.21A(a); 2011-391, s. 59(a), (b); 2013-382, ss. 5.1, 9.1(c); 2015-260, s. 5.1; 2018-5, s. 35.24.)

§ 126-7.2: Repealed by Session Laws 2013-382, s. 6.2, effective August 21, 2013, and applicable to grievances filed on or after that date.

§ 126-7.3. Annual compensation surveys.

To guide the Governor and the General Assembly in making decisions regarding the compensation of State employees, the Office of State Human Resources shall conduct annual

compensation surveys. The Commission shall present the results of the compensation survey to the Appropriations Committees of the House of Representatives and the Senate no later than two weeks after the convening of the legislature in odd-numbered years and May 1st of even-numbered years. (2013-382, ss. 7.9(b), 9.1(c).)

§ 126-8. Minimum leave granted State employees.

The amount of vacation leave granted to each full-time State employee subject to the provisions of this Chapter shall be determined in accordance with a graduated scale established by the State Human Resources Commission which shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated monthly, cumulative to at least 30 days. On December 31 of each year, any State employee who has vacation leave in excess of the allowed accumulation shall have that leave converted to sick leave. Sick leave allowed as needed to such State employees shall be at a rate not less than 10 days for each calendar year, cumulative from year to year. Notwithstanding any other provisions of this section, no full-time State employee subject to the provisions of Chapter 126, as the same appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973, shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative to at least 30 days. (1965, c. 640, s. 2; 1973, c. 697, ss. 1, 2; 1975, c. 667, s. 2; 1993, c. 321, s. 73(f); c. 561, s. 18(a); 2013-382, s. 9.1(c).)

§ 126-8.1. Paid leave for certain athletic competition.

(a) As used in this section, the term "United States team" includes any group leader, coach, official, trainer, or athlete who is a member of an official United States delegation in Pan American, Olympic or international athletic competition.

(b) Any State employee or public school employee paid by State funds who has been chosen to be a member of a United States team for Pan American, Olympic or international competition shall be granted paid leave, in addition to annual and sick leave that person is otherwise entitled to, for the sole purpose of training for and competing in that competition. The paid leave shall be for the period of the official training camp and competition or 30 days a year, whichever is less.

(c) The Office of State Human Resources may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the Governor. (1979, c. 708; 1983, c. 717, s. 42; 1985, (Reg. Sess., 1986), c. 955, ss. 44, 45; 2006-203, s. 69; 2015-260, s. 5.2.)

§ 126-8.2. Replacement of law-enforcement officer on final sick leave.

When a sworn law-enforcement officer employed by the State is on sick leave, and the head of the department employing the officer has obtained a certification from a physician that the officer will not recover and return to duty, a replacement for the officer may be hired even though the resulting number of employees in the department exceeds the number for which an appropriation was made in the Current Operations Appropriations Act, if sufficient funds are available from appropriations to the department for salaries to pay the salary of both the new employee and the officer on sick leave until the officer's accumulated leave is exhausted or his employment is terminated. (1983 (Reg. Sess., 1984), c. 1034, s. 105.)

§ 126-8.3. Voluntary shared leave.

(a) The State Human Resources Commission, in cooperation with the State Board of Community Colleges and the State Board of Education, shall adopt rules and policies to allow any employee at a State agency to share leave voluntarily with an immediate family member who is an employee of a State agency, community college, or public school; and with a coworker's immediate family member who is an employee of a State agency, community college, or public school. For the purposes of this section, the term "immediate family member" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. The term "coworker" means that the employee donating the leave is employed by the same agency, department, institution, university, local school administrative unit, or community college as the employee whose immediate family member is receiving the leave.

(b) The State Human Resources Commission shall adopt rules and policies for the voluntary shared leave program to allow an employee at a State agency to donate sick leave to a nonfamily member employee of a State agency. A donor of sick leave to a nonfamily member recipient shall not donate more than five days of sick leave per year to any one nonfamily member recipient. The combined total of sick leave donated to a recipient from nonfamily member donors shall not exceed 20 days per year. Donated sick leave shall not be used for retirement purposes, and employees who donate sick leave shall be notified in writing of the State retirement credit consequences of donating sick leave.

(c) The State Human Resources Commission, the Department of Public Instruction, and the Community Colleges System Office and all State agencies, departments, and institutions shall annually report to the Office of State Human Resources on the voluntary shared leave program. For the prior fiscal year, the report shall include the total number of days or hours of vacation leave and sick leave donated and used by voluntary shared leave recipients and the total cost of the vacation leave and sick leave donated and used. (1999-170, s. 1; 2003-9, s. 1; 2003-284, s. 30.14A(a); 2010-139, ss. 1, 3; 2013-382, ss. 7.8, 9.1(c); 2019-165, s. 3.7.)

§ 126-8.4. (See note on condition precedent) No sick leave taken for absences by State employees resulting from adverse reactions to vaccination.

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination. The provisions of this

subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees. (2003-169, s. 4.)

§ 126-8.5. Discontinued service retirement allowance and severance wages for certain State employees.

(a) When the Director of the Budget determines that the closing of a State institution or a reduction in force will accomplish economies in the State Budget, the Director of the Budget shall pay either a discontinued service retirement allowance or severance wages to any affected State employee, provided reemployment is not available. As used in this section, "economies in the State Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. In determining whether to pay a discontinued service retirement allowance or severance wages, the Director of the Budget shall consider the recommendation of the department head involved and any recommendation of the Director of the Office of State Human Resources. Severance wages shall not be paid to an employee who chooses a discontinued service retirement. Severance wages shall not be subject to employer or employee retirement contributions. Severance wages shall be paid according to the policies adopted by the State Human Resources Commission.

Notwithstanding any other provisions of the State's retirement laws, any employee of the State who is a member of the Teachers' and State Employees' Retirement System or the Law-Enforcement Officers' Retirement System and whose job is involuntarily terminated as a result of economies in the State Budget may be entitled to a discontinued service retirement allowance, subject to the approval of the employing agency and the availability of agency funds. An unreduced discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 55 years of age; or a discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 50 years of age, reduced by one-fourth of one percent (1/4 of 1%) for each month that retirement precedes the employee's fifty-fifth birthday. In cases where a discontinued service retirement allowance is approved, the employing agency shall make a lump sum payment to the Administrator of the State Retirement Systems equal to the actuarial present value of the additional liabilities imposed upon the System, to be determined by the System's consulting actuary, as a result of the discontinued service retirement, plus an administrative fee to be determined by the Administrator, plus an amount to be deposited in the Retiree Health Benefit Fund. The amount to be deposited in the Retiree Health Benefit Fund shall be calculated by multiplying the number of years between the employee's date of discontinued service retirement and the employee's earliest unreduced retirement date under G.S. 135-5 by the most recent employer contribution rate to the Retiree Health Benefit Fund and then, if the employee is or would be eligible for retiree medical coverage under the State Health Plan for Teachers and State Employees, multiplying that figure by the salary used in the discontinued salary retirement calculation.

The salary used to determine severance wages under this section is the last annual salary except that if the employee was promoted within the previous 12 months, the last annual salary is that annual salary prior to the promotion. If the annual salary prior to the promotion is used, it shall be

adjusted to account for any across-the-board legislative salary increases. Excluded from any calculation are any benefits such as, but not limited to, overtime pay, shift pay, holiday premium, or longevity pay. The salary used to determine the discontinued retirement allowance under this section is the same as the average final compensation under G.S. 135-1(5).

(b) Any employee separated from State government and paid severance wages under this section shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of The University of North Carolina and the constituent institutions of the North Carolina Community College System, until 12 months have elapsed since the separation. This subsection does not affect any reduction in force rights that the employee may have. (1979, c. 838, s. 22; 1983, c. 761, s. 225; c. 923, s. 217(R); 1983 (Reg. Sess., 1984), c. 1034, s. 251; 1985 (Reg. Sess., 1986), c. 981, s. 1; c. 1024, s. 20; 1987, c. 177, s. 2; 1989 (Reg. Sess., 1990), c. 1066, s. 36(a); 1998-212, s. 28.28(a); 2006-203, s. 6; 2013-382, s. 9.1(c); 2020-29, s. 1(h).)