Article 8.

Just Cause, Disciplinary Actions, and Grievances.

§ 126A-8-1. Just cause, disciplinary actions, and grievances.

The Commission shall establish policies on just cause, disciplinary actions, and grievances, including the following:

(1) The definition of just cause.

(2) The investigation of complaints and the issuing of binding corrective orders or other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue under G.S. 126A-8-5(c).

(3) The assessment of reasonable attorneys' fees and witnesses' fees against the agency involved in the grievance.

(4) An alternative dispute resolution procedure.

(5) The disciplinary demotion, suspension, or dismissal of employees and the disciplinary process.

(6) The grievance process.

(7) Review and approval of settlements, including authorization for agencies to enter into settlement agreements for remedies other than back pay, front pay, other omitted benefits, and attorneys' fees. (2026-40, s. 1.)

§ 126A-8-2. Disciplinary actions.

(a) No career employee subject to this Article shall be dismissed, suspended, or demoted for disciplinary reasons, except for just cause.

(b) In determining whether just cause exists for dismissal, suspension, or demotion for unacceptable personal conduct, an employing agency shall consider all of the following factors:

(1) The severity of the conduct.

(2) The subject matter of the conduct and whether it was job-related.

(3) The actual harm or risk of potential harm resulting from the conduct, including harm to the agency's operations, efficiency, mission, reputation, or public trust.

(4) The employee's work history.

(5) Discipline imposed in past cases of similar violations. An agency may modify its disciplinary standard when it determines that past precedent is no longer appropriate and the modification is grounded in articulable reasoning and applied fairly and consistently to current and prospective cases.

(c) The employing agency shall exercise reasonable discretion in identifying which of the factors outlined in subsection (b) of this section are most relevant given the facts presented and how to weigh the various factors to determine appropriate discipline. No discipline shall fail solely for failing to consider one of the factors in subsection (b) of this section if just cause was present.

(d) In determining whether just cause exists for dismissal, suspension, or demotion for issues of job performance, the employing agency shall employ the following standards:

(1) Unsatisfactory job performance. – The employing agency shall assess whether the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by management.

(2) Grossly inefficient job performance. – The employing agency shall assess whether the employee's failure to satisfactorily perform job requirements results in harm or the potential for harm, including death, serious bodily injury,

or loss of or damage to State property or funds that result in a serious impact on the State or work unit.

(e) In cases where an employing agency has decided to take disciplinary action, the employee shall be given written notice before the action is taken that explains the specific acts or omissions that are the reasons for the disciplinary action. The written notice shall also explain the employee's appeal rights. The employee may appeal to the agency head through the agency grievance procedure for a final agency decision within 15 days of receiving the notice. If the employee appeal involves an allegation of discrimination, retaliation, or harassment, the employee shall file an equal employment opportunity inquiry within 15 days of receiving the notice before appealing through the agency grievance procedure. The employee will have 15 days following the closure of the equal employment opportunity inquiry to appeal through the agency grievance procedure for a final agency decision.

(f) Notwithstanding subsection (e) of this section, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons.

(g) If the employee is not satisfied with the final agency decision or is unable, within a reasonable period of time, to obtain a final agency decision, the employee may appeal to the Office of Administrative Hearings. This appeal shall be filed within 30 days of receiving of notice of the final agency decision.

(h) In accordance with G.S. 150B-34(a), the administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. (2026-40, s. 1.)

§ 126A-8-3. Temporary redeployment of employees after criminal charges filed.

If criminal charges are filed against an employee, the employing agency may redeploy that employee, without just cause and without the agreement of the employee, to a different position or different set of job duties. The employee's salary shall not be decreased as a result of the redeployment, and this redeployment shall end if the charges against the employee are dismissed or the employee is acquitted of those charges. Nothing in this section prevents the employing agency from taking disciplinary action against the employee if there is just cause. (2026-40, s. 1.)

§ 126A-8-4. Grievance; resolution.

(a) Any employee having a grievance arising out of or due to his or her employment shall first discuss the grievance with the employee's supervisor, unless the grievance is with the supervisor. Then the employee shall follow the agency grievance procedure. The proposed final agency decision shall not be issued or become final until reviewed and approved by OSHR.

(b) Any applicant having a grievance arising out of or due to his or her hiring shall follow the agency grievance procedure. The proposed final agency decision shall not be issued or become final until reviewed and approved by OSHR.

(c) The agency grievance procedure and OSHR review shall be completed within 120 days from the date the grievance is filed. If an employee or applicant files multiple grievances within the same calendar month, the grievances shall be merged and the 120-day time line under this section resets. The Office of Administrative Hearings may issue gatekeeping orders to prevent abuse of the grievance process.

(d) Local agencies shall establish grievance procedures consistent with this Article that do not require approval of a final agency decision by OSHR. Local employees shall follow local agency grievance procedures. (2026-40, s. 1.)

§ 126A-8-5. Grievance appeal process.

(a) Once a final agency decision has been issued in accordance with G.S. 126A-8-4, an applicant, employee, or former employee may file a contested case in the Office of Administrative Hearings under Article 3 of Chapter 150B of the General Statutes. The contested case must be filed within 30 days of receipt of the final agency decision. Except for cases of extraordinary cause shown, the Office of Administrative Hearings shall hear and issue a final decision in accordance with G.S. 150B-34 within 180 days from the commencement of the case. In deciding cases under this section, the Office of Administrative Hearings may grant the following relief:

(1) Reinstatement of the employee to the position from which the employee has been removed.

(2) Ordering the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied.

(3) Directing other suitable action to correct the abuse which may include the requirement of payment for any loss of salary that has resulted from the improper action of the agency.

(b) An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

(c) The following issues may be heard as contested cases after completion of the agency grievance procedure and the OSHR review:

(1) Discrimination or harassment. – An applicant for employment, an employee, or former employee may allege discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in his or her application for employment or in the terms and conditions of the employee's employment, or in the termination of his or her employment.

(2) Retaliation. –- An applicant for employment, an employee, or former employee may allege retaliation for protesting discrimination based on race, religion, color, national origin, sex, age, disability, political affiliation, or genetic information if the employee believes that he or she has been retaliated against in his or her application for employment, in the terms and conditions of the employee's employment, or in the termination of the employee's employment.

(3) Just cause for dismissal, demotion, or suspension. – A career employee may allege that he or she was dismissed, demoted, or suspended for disciplinary reasons without just cause. A dismissal, demotion, or suspension not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this section. However, in contested cases conducted pursuant to this section, an employee may appeal an involuntary nondisciplinary separation due to an employee's unavailability in the same fashion as if it were a disciplinary

action, but the agency shall only have the burden to prove that the employee was unavailable.

(4) Veteran's and National Guard preference. – An applicant for employment or an employee may allege that he or she was denied veteran's preference or National Guard preference in violation of the law.

(5) Failure to post or give priority consideration. – An applicant for employment or an employee may allege that he or she was denied hiring or promotion because a position was not posted in accordance with this Chapter, or a career State employee may allege that he or she was denied a promotion as a result of a failure to give priority consideration for promotion as required by G.S. 126A-5-12 or a career employee may allege that he or she was denied hiring as a result of the failure to give him or her a reduction-in-force priority.

(6) Whistleblower. – A whistleblower grievance as provided in Article 14 of this Chapter.

(d) Any issue for which an appeal to the Office of Administrative Hearings has not been specifically authorized by this section shall not be grounds for a contested case hearing.

(e) In contested cases conducted pursuant to this section, the burden of showing that a career employee was discharged, demoted, or suspended for just cause rests with the employing agency. In all other contested cases, the burden of proof rests with the employee or applicant.

(f) The Office of Administrative Hearings may award attorneys' fees to an employee where reinstatement or back pay is ordered or where an employee prevails in a whistleblower grievance. The remedies provided in this subsection in a whistleblower appeal shall be the same as those provided in G.S. 126A-14-4.

(g) The Office of Administrative Hearings shall report to OSHR and the Joint Legislative Administrative Procedure Oversight Committee on the number of cases filed under this section and on the number of days between filing and closing of each case. The report shall be submitted on May 1 and November 1 of each year. (2026-40, s. 1.)

§ 126A-8-6. Alternative dispute resolution.

(a) The Commission may adopt policies on alternative dispute resolution procedures for the resolution of matters constituting grounds for a grievance under this Article.

(b) The Commission may adopt policies on alternative dispute resolution procedures for matters not constituting grounds for a grievance under this Article that cannot be heard by the Office of Administrative Hearings as a contested case. (2026-40, s. 1.)

§ 126A-8-7. Judicial review of fee awards.

A decision of the Office of Administrative Hearings on whether to assess reasonable witnesses' fees or a reasonable attorneys' fee shall be subject to judicial review in accordance with G.S. 126A-8-5(b). The reviewing court may reverse or modify the decision of the Office of Administrative Hearings if the decision is unreasonable or the award is inadequate. An employee who obtains a reversal or modification of the Office of Administrative Hearings' decision in an appeal under this section shall be entitled to recover court costs and a reasonable attorneys' fee for representation in connection with the appeal. (2026-40, s. 1.)