

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 1025  
SENATE BILL 1345

AN ACT TO MAKE VARIOUS CHANGES TO THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7 reads as rewritten:

"§ 126-7. **Compensation of State employees.** (a) It is the policy of the State to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees shall be based, in part, on each individual employee's job performance and, in part, on general increases given to all State employees.

(b) To guide the Governor and the General Assembly in making appropriations to further the compensation policy of the State, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall determine the percent of funds appropriated for salary increases to be reserved for a general increase for all State employees and the percent to be reserved for performance-based increases for eligible employees. The Commission shall present its recommendation on the percentages and the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st, of even years. The amount reserved for performance increases shall not be less than twenty-five percent (25%) nor more than seventy-five percent (75%) of the total allocation.

(c) Performance increases shall be based on performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S.126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:

- (1) The performance appraisal system of each department, agency, or institution shall be designed and administered to ensure that performance increases are distributed fairly and reward only performance that exceeds performance requirements.
- (2) To be eligible to distribute its share of the performance increase allocation, a department, agency, or institution shall have an operative performance appraisal system which has been approved by the State Personnel Director. The performance appraisal system adopted shall use a rating scale of at least five levels, with the top three levels qualifying for performance increases, and of:

- a. Five levels, with the top two levels qualifying for performance increases; or
- b. Other than five levels, with the levels qualifying for performance increases to be designated by the State Personnel Commission, for those job classifications in those employing units where a department, agency, or institution demonstrates to the State Personnel Commission that some number of levels other than five would be appropriate, and the State Personnel Commission, after conducting a public hearing, determines that a rating scale of other than five levels is more appropriate than five levels for a particular job classification within a particular employing unit.

There shall be a presumption that a five-level system is the most appropriate system, and the department, agency, or institution must demonstrate with clear and convincing evidence that a different system is more appropriate. The performance appraisal system adopted shall adhere to modern personnel management techniques and practices in common use in the public and private sectors. Departments, agencies, and institutions with existing performance appraisal systems which use a rating scale which is not consistent with the five-level system described above shall have until July 1, 1991, to bring their systems into compliance with this subsection.

- (3) The State Personnel Director shall help departments, agencies, and institutions to establish and administer their performance appraisal systems and shall provide initial and ongoing training in performance appraisal and performance system administration.
- (4) An employee whose performance exceeds performance requirements shall receive a performance increase unless the employee's supervisor justifies in writing to the employee the decision not to award the performance increase. An employee whose performance does not exceed performance requirements shall not receive a performance increase. Standards for performance and standards for performance pay increases may be established for each department, agency, or institution. These standards may not set limits so as to preclude an employee whose performance exceeds performance requirements from consideration for an increase.
- (5) The State Personnel Director shall set the performance increase ranges allowable for levels of performance that exceed performance requirements. ~~Absent the supervisor's written justification, an employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating level. With the supervisor's written justification, an individual employee's increase may vary above or below the midrange value within the allowable range. An employee whose performance exceeds~~

expectations shall receive a percentage increase equal to the midrange value for his rating, unless the supervisor can justify an increase above or below the midrange value within the allowable range. The supervisor shall give an employee written justification of his decision to award an increase above or below the midrange value when the employee requests written justification. A supervisor's performance appraisal plan, evaluation standards for each employee, and individual employee ratings and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.

- (5a) If an employee is otherwise eligible for a performance increase and is at the top of (but does not exceed) a pay scale, the employee shall receive a performance increase in the form of a performance bonus. This performance bonus shall be a one-time, lump-sum award paid separately from any other payment to the employee for the year. Such award shall not serve to increase the base pay of such employee. An award of this bonus pursuant to this subdivision does not affect:
- a. The value of the top of any pay scale; and
  - b. The employee's current salary, which will remain at the top of the pay scale.

Except as provided in this subdivision, all other provisions of this subsection shall apply to an employee at the top of a pay scale.

- (6) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.
- (7) An employee who disputes the fairness of his performance evaluation or the sufficiency of the increase awarded or who believes that he was unfairly denied a performance increase shall first discuss the problem with his supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final decision. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues.
- (8) The State Personnel Director shall monitor the performance appraisal system and performance increase distribution of each employing unit within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports

which shall include data on the demographics of performance ratings, the frequency of evaluations, the performance pay increases awarded, and the implementation schedule for performance pay increases. The Director shall analyze the data to ensure that performance increases are distributed fairly within each department, agency, and institution and across all departments, agencies, and institutions of State government and shall report back to each department, agency, and institution on its appraisal and distribution performance.

- (9) The State Personnel Director shall report annually on the performance pay program to the Commission. The report shall evaluate the performance of each department, agency, and institution in the administration of its appraisal system and the distribution of performance increases within each department, agency, and institution and across State government. The report shall include recommendations for improving the performance appraisal system and alleviating inequities. Copies of the report shall be sent to the State Auditor.
- (10) The Commission shall report annually to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Standing Personnel Committees of the House and the Senate. The Commission report shall include an evaluation of the administration of the appraisal system and distribution of performance increases by each department, agency, and institution. The State Personnel Director shall recommend to the General Assembly for its approval sanctions to be levied against departments, agencies, and institutions that have deficient appraisal systems or that do not link performance increases to performance. These sanctions may include withholding performance increases from the managers and supervisors of individual employing units of departments, agencies, and institutions in which discrepancies exist.

(d) The provisions of subsections (a), (b), and (c) shall not affect the system of longevity payments established by the State Personnel Commission.

~~(e) Nothing in this section shall require or authorize any department, agency, or institution to establish a limitation on the number or percentage of employees who are eligible under this section to receive performance increases."~~

Sec. 2. G.S. 126-35 reads as rewritten:

**"§ 126-35. Written statement of reason for disciplinary action.**

(a) No permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. A copy of the written statement given the employee and

the employee's appeal shall be filed by the department with the State Personnel Director within five days of their delivery. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this Article, are those actions taken in accordance with the disciplinary procedures adopted by the State Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.

(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action."

Sec. 3. G.S. 126-37 reads as rewritten:

**"§ 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding review Administrative Law Judge's recommended decision and make final decision.**

(a) ~~The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission.~~ Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.

(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial **de novo**. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the decision of the Commission, the decision of superior court shall be binding on the local appointing authority.

(c) If the local appointing authority is other than a board of county commissioners, the employee must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the filing of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

Sec. 4. G.S. 126-38 reads as rewritten:

**"§ 126-38. Time limit for appeals.**

Any employee appealing any decision or action ~~to the Commission~~ shall file a ~~written statement of appeal with the Commission or its designate~~ petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal."

Sec. 5. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act and any funds allocated under this act shall come from the performance pay previously appropriated.

Sec. 6. Section 2 of this act is effective upon ratification and shall apply to affected personnel actions effective on or after the date of ratification. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.