

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 141
SENATE BILL 405

AN ACT TO AMEND THE STATE PERSONNEL ACT RELATING TO THE DEFINITION OF CAREER STATE EMPLOYEE, THE GROUNDS FOR STATE EMPLOYEE APPEALS, THE INVESTIGATORY DUTIES OF THE OFFICE OF STATE PERSONNEL, AND THE PRIORITY CONSIDERATION OF STATE EMPLOYEES IN FILLING VACANCIES; TO PROVIDE FOR THE ADOPTION OF AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE BY THE STATE PERSONNEL COMMISSION; AND TO ALLOW ALTERNATIVE OBSERVANCE OF THE NEW YEAR'S HOLIDAY.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"§ 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 who:

- (1) Is in a permanent position appointment; and
- (2) Has been continuously employed by the State of North Carolina in a position subject to the State Personnel Act for the immediate 24 preceding months."

Sec. 2. G.S. 126-1A is repealed.

Sec. 3. G.S. 126-5(c) reads as rewritten:

"(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- (1) A State employee ~~who: who is not a career State employee as defined by this Chapter.~~
 - a. ~~Is in a primary level position and has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;~~
 - b. ~~Is in a secondary level or professional position and has not been continuously employed by the State of North Carolina for the immediate 24 preceding months; or~~
 - e. ~~Is in a management level or consultant position and has not been continuously employed by the State of North Carolina for the immediate 36 preceding months.~~

- d. Repealed by Session Laws 1991, c. 354, s. 3.
- (2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.
 - (3) Employees in policymaking positions designated as exempt pursuant to G.S. 126-5(d).
 - (4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity."

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

"§ 126-4. Powers and duties of State Personnel Commission.

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

- (1) Position classification plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.
 - (2) Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.
 - (3) For each class of positions, reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.
 - (4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.
 - (5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.
- (5a) In years in which New Year's Day falls on Saturday, the Commission may designate December 31 of the previous calendar year as the New Year's holiday, provided that the number of holidays for the previous calendar year does not exceed 12 and the number of holidays for the current year does not exceed 10. When New Year's Day falls on either Saturday or Sunday, the constituent institutions of The University of North Carolina that adopt alternative dates to recognize the legal public holidays set forth in subdivision (5) of this section and established by the Commission may designate, in accordance with the

rules of the Commission and the requirements of this subdivision, December 31 of the previous calendar year as the New Year's holiday.

- (6) The appointment, promotion, transfer, demotion and suspension of employees.
- (7) Cooperation with the State Board of Education, the Department of Public Instruction, the University of North Carolina, and the Community Colleges of the State and other appropriate resources in developing programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.
- (7a) The separation of employees.
- (8) A program of meritorious service awards.
- (9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.
- (10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.
- (11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.
- (12) Repealed by Session Laws 1987, c. 320, s. 2.
- (13) Repealed by Session Laws 1987, c. 320, s. 3.
- (14) The implementation of G.S. 126-5(e).
- (15) Recognition of State employees, public personnel management, and management excellence.
- (16) The implementation of G.S. 126-7.
- (17) An alternative dispute resolution procedure.

~~Such~~ The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in his the department head's discretion and upon his the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter.

- (1) ~~Employee in a primary level position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;~~
- (2) ~~Employee in a secondary level or professional position who has not been continuously employed by the State of North Carolina for the immediate 24 preceding months; [or]~~
- (3) ~~Employee in a management level or consultant position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months.~~
- (4) Repealed by Session Laws 1991, c. 354, s. 2, effective July 1, 1993."

Sec. 5. G.S. 126-5(h) reads as rewritten:

"(h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, ~~the question shall be investigated by the State Personnel Office, and the~~ dispute shall be resolved as provided in Article 3 of Chapter 150B."

Sec. 6. G.S. 126-7(c)(7) reads as rewritten:

- "(7) An employee who disputes the fairness of his or her performance appraisal or the amount of ~~the~~ a performance bonus awarded or who believes that he or she was unfairly denied a career growth recognition award or performance bonus shall first discuss the problem with his or her 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.~~ decision, or when consented to by both the agency and the employee, the supervisor's decision may be appealed by following the alternative dispute resolution process adopted by the State Personnel Commission. 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."

Sec. 7. Article 8 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

- (1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.
- (2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

- a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.
 - b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.
- (3) Retaliation against an employee, as proscribed by G.S. 126-17, for protesting an alleged violation of G.S. 126-16.
 - (4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.
 - (5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.
 - (6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

- (1) Alleged denial of employment in violation of G.S. 126-16.
- (2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.
- (3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age.
- (4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the

General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

Sec. 8. Article 8 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"§ 126-34.2. Alternative dispute resolution.

(a) Notwithstanding the provisions of Articles 6 and 7 of this Chapter, or the other provisions of this Article, with the consent of the parties, a matter for which a State employee, a former State employee, or an applicant for State employment has filed a contested case under Article 3 of Chapter 150B of the General Statutes may be handled in accordance with alternative dispute resolution procedures adopted by the State Personnel Commission.

(b) In its discretion, the State Personnel Commission may adopt alternative dispute resolution procedures for the resolution of matters not constituting grounds for a contested case under G.S. 126-34.1.

(c) Nothing in this section shall be construed to limit the right of any person to file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes."

Sec. 9. G.S. 126-7.1(c) reads as rewritten:

"(c) If a State employee subject to this section:

- (1) Applies for another position of State ~~employment; and 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."

Sec. 10. Article 2 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"§ 126-7.2. Time limit for appeals of applicants and noncareer State employees.

Any applicant or employee that has not attained career status, appealing any decision or action shall file a petition for contested case hearing 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. 11. This act is effective upon ratification, except that Sections 1 and 2 become effective July 1, 1996, and Section 1 applies to all State employees employed on or after that date who have not attained career State employee status prior to that date.

In the General Assembly read three times and ratified this the 1st day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives