

**North Carolina
Department of Agriculture & Consumer Services**



Equal Employment Opportunity Plan

March 1, 2024

**North Carolina Department of Agriculture & Consumer Services (NCDA&CS)
2024 Equal Employment Opportunity Plan**

SECTION I. Table of Contents

SECTION I. Table of Contents 2

SECTION II. Program Elements..... 4

1. Equal Employment Opportunity/Affirmative Action Plan Certification Statement 4

2. Policy Statement 5

3. NCDA&CS Agency Overview 6

a. Vision:..... 6

b. Mission Statement:..... 6

c. Purpose:..... 6

4. Agency Achievements and Best Practices..... 7

5. Assignment of Responsibility & Accountability..... 8

6. Dissemination of the EEO/AA Policy and Plan 11

a. INTERNAL DISSEMINATION: 11

b. EXTERNAL DISSEMINATION:..... 11

7. Program Activities 11

a. Recruitment..... 11

b. Selection 12

c. Onboarding..... 12

d. Promotion 13

e. Training..... 14

f. Compensation and Benefits 15

g. Performance Management..... 15

h. Transfers and Separations Including Reduction-In-Force 16

i. Disciplinary 16

j. Grievance..... 17

8. Equal Employment Opportunity and Diversity Fundamentals (EODF) 17

9. Reasonable Accommodation 18

10. Program Evaluation, Reporting & Monitoring 19

11. Harassment Prevention and Strategies 20

12. Reduction-In-Force 20

13. Pregnancy Workplace Adjustments (EO82)	21
14. Prohibiting the Use of Salary History (EO93)	22
SECTION III. Data Elements	22
a. Recognizing the Value of Experience in State Government Hiring (EO278)	22
b. Workforce Availability	22
c. Agency Occupational Categories	23
d. Program / Employment Objectives	24
e. Attainment of Employment Objectives	24
f. Additional Areas of Statistical Evaluation	27
SECTION IV. Documents / Attachments	32
1. Equal Employment Opportunity Policy	
2. NCDA&CS Organizational Chart	
3. NCDA&CS Merit Based Recruitment Plan	
4. NCDA&CS Mandatory and Recommended Training	
5. Disciplinary Action Policy	
6. Employee Grievance Policy	
7. Reasonable Accommodation Policy	
8. Unlawful Workplace Harassment Policy	
9. Reduction-In-Force Policy	
10. B0029: EEO Planning by Org Structure (Electronic)	
11. B0031: Staffing by Occupational Category	
12. B0170: Labor Force Standard – Employee Distribution – by SOC Subcategory 12-2023	
13. B0170: Job Opening Estimate Forms	
14. EEO Quantitative Analysis Form	
15. B0170: Labor Force Standard – Employee Distribution – by SOC Category 12-2023	
16. B0170: Labor Force Standard – Employee Distribution – by SOC Category 12-2022	
17. B0038: Employee Headcount by Org Structure 12-2023	
18. B0038: Employee Headcount by Org Structure 12-2022	

SECTION II. Program Elements

1. Equal Employment Opportunity/Affirmative Action Plan Certification Statement

This certifies that the attached Equal Employment Opportunity/Affirmative Action Plan represents the North Carolina Department of Agriculture & Consumer Services' commitment to provide equal employment opportunities to all applicants and employees. I attest that the North Carolina Department of Agriculture & Consumer Services follows the North Carolina Equal Employment Opportunity Policy along with applicable federal and state laws, including current executive orders governing equal employment opportunities.



Commissioner Steven W. Troxler, Agency Head

2/26/2024

Date



Jane Strickland, EEO/AA Officer

2/26/2024

Date

2. Policy Statement

(Attachment 1: Equal Employment Opportunity Policy)

STATEMENT OF NORTH CAROLINA EQUAL EMPLOYMENT OPPORTUNITY POLICY

A portion of the policy is shown below. The entire policy can be found on the Office of State Human Resources (OSHR) website at: <https://oshr.nc.gov/policies-forms/eeo/equal-employment-opportunity-policy>.

The State of North Carolina recognizes that an effective and efficient government requires the talents, skills and abilities of all qualified and available individuals, and seeks opportunities to promote diversity and inclusion at all occupational levels of State government's workforce through equal employment opportunity (EEO) workforce planning initiatives. The State is committed to ensuring the administration and implementation of all human resources policies, practices and programs are fair and equitable without unlawful discrimination, harassment or retaliation on the basis of race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information, or disability. State agencies, departments and universities shall be accountable for administering all aspects of employment, including hiring, dismissal, compensation, job assignment, classification, promotion, reduction-in-force, training, benefits and any other terms and conditions of employment in accordance with federal and State EEO laws.

3. NCDA&CS Agency Overview

(Attachment 2: NCDA&CS Organizational Chart)

a. Vision:

To become a globally recognized leader in the Agriculture / Agribusiness industry

b. Mission Statement:

To provide services that promote and improve agriculture, agribusiness, and forests; protect consumers and business; and conserve farmland and natural resources for the prosperity of all North Carolinians.

c. Purpose:

The North Carolina Department of Agriculture & Consumer Services' divisions have responsibilities in regulatory and service areas covering agronomy; animal health; weights and measures; gas and oil inspection; crop and livestock statistics; USDA commodity distribution; state farm operations; food, drug and cosmetic testing for purity; agricultural marketing and promotion; agricultural marketing grading; international agricultural crop and livestock marketing; operation of the North Carolina State Fair and North Carolina Mountain State Fair; operation of four state farmers' markets; research station operations; seed and fertilizer inspection; nursery and plant pest eradication activities; regulation of the structural pest control industry; agricultural environmental issues; soil and water conservation; forest management and protection; state and federal agricultural legislation; and agricultural economic analysis.

4. Agency Achievements and Best Practices

NCDA&CS continues to focus on ensuring that all terms and conditions of employment are fair and accessible and that employment decisions are made without regard to race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age, political affiliation, National Guard or veteran status, genetic information, or disability. In support of this mission, standardized procedures, as detailed in this plan, are consistently administered in the following areas: recruitment and selection, compensation, benefits, onboarding, training, performance management, discipline, and grievance.

NCDA&CS is staffed with two Employee Relations/EEO positions. The HR Consultant III serves as manager of the programs and as the Agency EEO Officer. The HR Consultant II serves as primary consultant on employee relations matters and plays a supportive role in the Agency's Diversity and Inclusion programming. The Employee Relations and EEO team is dedicated to developing and implementing a stronger and improved Diversity and Inclusion program, as demonstrated by the following:

- NCDA&CS is in the fourth year of a fully implemented systematic EEO review of all NCDA&CS hiring decisions. Additionally, enhancements have been made to our review process to further support the NCDA&CS' commitment to equal employment, which includes a more comprehensive review of hiring packages. During 2024, managers and supervisors will receive additional education on the review process and best practices to use throughout the hiring process.
- All division leaders are involved in the annual planning process and have the opportunity to provide input. EEO planning discussions are held as necessary to assist management in establishing agency EEO goals and to promote a successful program in collaboration with agency leaders.
- EEO information, events and associated activity is regularly disseminated using Agency-wide email.
- The EEO team, in collaboration with the Recruitment, Learning & Performance, and Safety teams, created a database of approved competency-based interview questions for managers to utilize. The database was launched in May 2023 and is maintained by ER/EEO teammates.

The agency remains committed to a well-trained workforce. The ER/EEO team collaborates with the Learning & Performance team as needed to ensure success. The current ER/EEO consultant plans to become a certified facilitator in EEODF; she is an experienced training professional with extensive knowledge of EEODF by serving as a facilitator's assistant for this program. Our goal is to ensure that all managers are fully engaged and educated in EEODF. Additionally, since the EEODF training was revised and launched January 2024, we are encouraging managers who have not taken the training within the last 5 years to consider taking the training again.

All new employees receive an Equal Employment Opportunity Policy overview during New Employee Orientation. All employees receive the NCDA&CS Unlawful Workplace Harassment training as an annual refresher. Prior to the launch of refresher training, Learning & Performance staff researches available courses and collaborates with Employee Relations/EEO

and Safety staff to select training that aligns with the department’s commitment to a workplace that values and respects all employees. Unlawful Workplace Harassment training is on the department’s list of required training for all employees. The Agency is committed to prevention strategies and continues to require employees to complete training annually.

The NCD&CS’ leadership program, *Cultivate Your Strengths*, which is designed to increase awareness of diversity, equity, and inclusion, is grounded in comprehensive, research-based programming and provided by Gallup, Inc. This leadership development program provides strategies to demonstrate the following “meets expectations” and “exceeds expectations” descriptions within the Diversity & Inclusion value:

- Effectively works with people of diverse backgrounds, regardless of personal differences that may exist
- Considers and respects different opinions, styles, and ways of working
- Thrives within the context of diverse teams; capitalizes on diversity to find creative solutions and encourages other team members to leverage the diverse talents of agency and state staff.
- Helps other team members embrace the value of considering and honoring different opinions, styles, and ways of working.

In August 2023, the *Cultivate Your Strengths* Program was transitioned from Learning & Development to the Employee Relations/EEO office for administration. Our current ER/EEO Consultant is a Gallup® Certified Strengths Coach, and lead facilitator for *Cultivate Your Strengths*. She has been successful in promoting the program to Division/section heads and continues to manage the program within the department. Managers and employees who have participated in the program highly recommend *Cultivate Your Strengths* to others. As a result, interest in the program has grown and additional training sessions are being scheduled. Because *Cultivate Your Strengths* encourages valuing each other’s strengths and leveraging them practically in team settings, the program is an effective means for resolving conflict and fostering an inclusive work environment.

The agency continues to use the NCD&CS intranet/internet pages and Agency-wide email to promote EEO awareness and are committed to growing presence and awareness of EEO requirements and benefits of diversity, equity, and inclusion throughout the Agency.

5. Assignment of Responsibility & Accountability

COMMISSIONER OF AGRICULTURE

The Commissioner has the ultimate responsibility for ensuring the EEO Policy and programs specific to their organization are fully developed and successfully implemented. The Commissioner is further charged with the responsibility for ensuring that all employment practices and all aspects of the employment function within their organization are implemented in a manner which is equal for all applicants and employees.

1. Adhere to the policies and programs that have been adopted by the State Human Resources Commission (SHRC) and approved by the Governor.
2. Designate an EEO Officer who has access to the agency head to be responsible for the operation and implementation of the EEO Program.

3. Ensure each manager and supervisor has, as part of their performance plan, the responsibility to comply with EEO laws and policies, and assist in achieving EEO goals established by the Agency.
4. Ensure the Agency commitment to EEO is clearly communicated to all employees, applicants and the general public.
5. Provide the necessary resources to ensure the successful implementation of the EEO Program.
6. Ensure the development and implementation of HR policies, procedures and programs necessary to achieve a diverse workforce in each occupational category.
7. Take measures to ensure the work environment is consistent with the intent of the EEO policy and supports equal employment.

MANAGERS AND SUPERVISORS

Every manager and supervisor are responsible for implementing the specific elements of the EEO Plan, which are designed to eliminate barriers to equal employment opportunity which cause underutilization.

1. Assist in the development and implementation of the EEO Plan and Program and establish program objectives.
2. Maintain a diverse workforce for the department, division, work unit, or section.
3. Assist the EEO Officer in periodic evaluations to determine the effectiveness of the EEO Program; and
4. Provide a work environment and management practices which support equal opportunity in all terms and conditions of employment.

EEO COMMITTEE

The EEO Committee is vital to the success and acceptance of the Agency/University EEO Program. This group has the potential to influence top management in decisions relating to the use of human resources within the organization. An effective EEO Committee is composed of both managers and employees, with agency-wide representation. The EEO Committee should reflect the various demographic groups and occupational categories of the organization to ensure the committee's sensitivity to all EEO issues.

1. Serve as a communication link between managers and employees and the EEO staff on aspects of the EEO Plan and Program.
2. Review and evaluate the equal employment opportunity plan and program.
3. Review workforce representation data in each occupational category.
4. Survey the organizational climate and employee attitudes and evaluate the resultant data.
5. Meet with the Agency Head or University Chancellor in conjunction with the EEO Officer to discuss EEO Programs, report on the employees' concerns, and recommend changes or additions to the EEO Policy, Plan, or Program.
6. Identify recruitment resources and other activities designed to strengthen the EEO Program; and
7. Best practice is that the EEO Committee meet quarterly, but it is important that the group remain engaged and active if meetings are less frequent.
8. Once appointed, all members should attend the EEO training, if they have not already completed the course.

The EEO Office plans to resume committee meetings in 2024. These meetings will be held via MS Teams as members are located statewide. We will continue to use the group channel in MS Teams where members can post comments, review documents, and interact as needed between meetings. Additionally, ER/EEO teammates, in collaboration with the EEO Committee, would like to engage managers and employees in planning celebrations that recognize the cultures of our diverse workforce. Members of the EEO Committee are:

NCDA&CS EEO Committee	Title	Ethnicity	Gender	Age (2023)	Veteran	Disability
Abraham Costa	IT Director II	NHPI	M	50		Yes
Anna-Beth Williams	Regional Agronomist Agronomic Supervisor	W	F	33		
Bryan Moore	Standards Area Supervisor	B	M	59		
Deborah "Debbi" Kennedy	Office Assistant IV Clinton	W	F	56		
Eric Campbell	AGR Technician I PRS	W	M	42	Yes	
Jordan Johnson	Research Specialist Cherry RS	W	M	33		
Kaylin Lohr	Research Tech Cherry RS	W	F	26		
Lisa Mesnard	Admin Officer II Ag Sciences Center	W	F	54		
Mary Nicholson	Agr DFR DO DDO R3 D9 HQ District Forester	W	F	45		
Scott Reilly	Aircraft Mechanic-DFR DQ DDO Aviation Maint	W	M	53		

EEO OFFICER

The EEO Officer is appointed by the Commissioner and has direct access to the Commissioner to discuss EEO related issues. The EEO Officer is ultimately responsible for the development and implementation of the agency's EEO Plan and Program.

1. Interpret and apply Federal laws, state statutes, policy regulations and guidelines related to discrimination in employment and equal opportunity.
2. Ensure the EEO Plan is submitted by March 1 annually in accordance with the EEO Instruction and Format Guide as specified by the Office of State Human Resources.
3. Ensure hiring recommendations are reviewed for compliance with EEO program objectives prior to the final agency hiring decision.
4. Ensure all employees are made aware of the EEO Policy including the Annual EEO plan, EEO Policy, Reasonable Accommodation Policy, and Unlawful Workplace Harassment Policy and develop strategies to prevent unlawful workplace harassment and retaliation in the workplace.
5. Maintain and analyze data on workforce utilization and employment practices, including records of all complaints and grievances alleging discriminatory practices.
6. Advise management of the EEO program's impact and effectiveness on workforce demographics at all occupational levels.
7. Provide or coordinate EEO training for management and employees.
8. Provide confidential consultation for management and employees in matters involving EEO concerns.
9. Ensure federal laws prohibiting job discrimination are posted in work locations where notices to applicants and employees are customarily posted and easily accessible to applicants and employees with disabilities.
10. Establish and maintain effective working relationships with groups concerned with EEO concerned with EEO and Diversity & Inclusion.
11. Coordinate programs to achieve program objectives.

12. Present information on the EEO plan and program to management and employees on a regular basis; and
13. Ensure all newly hired, promoted, or appointed supervisors and managers complete required EEO training in accordance with G.S. 126-16.1.

6. Dissemination of the EEO/AA Policy and Plan

a. INTERNAL DISSEMINATION:

1. All employees have access to a hard or electronic copy (via the intranet) of the NCDA&CS EEO Plan.
2. Managers and supervisors are effectively trained annually on their responsibilities to the equal employment opportunity program and related agency policy.
3. The EEO policy statement is posted on bulletin boards in common areas and other areas where employees and/or the public may congregate.
4. EEO information, events and associated activity is regularly disseminated using Agency-wide email.
5. Newsletters and other in-house publications are used to communicate information about the EEO plan, program, and policy on a regular basis; and
6. Input is solicited from all employees on the agency EEO plan, policy, and program through Division Directors and Division HR Representatives.

b. EXTERNAL DISSEMINATION:

1. Provide a copy of the EEO policy to each resource, subcontractor, vendor and/or supplier (as required by relevant rules and regulations governing Human Resources; Contracts and Grants; and Purchasing).
2. Post the EEO Plan on the NCDA&CS external website;
3. Provide a copy of the agency/university vacancy list, job announcements and any other pertinent material to the appropriate recruitment resource(s); and
4. Maintain regular and routine contact with recruitment resources.

7. Program Activities

a. Recruitment

Attract a diverse pool of applicants to each occupational category, including veterans and persons with disabilities. (Attachment 3: NCDA&CS Merit Based Recruitment Plan)

In April 2019, Executive Order #93 was issued by Governor Roy Cooper. This Executive Order prohibits state agencies from requesting salary history from applicants or relying on previously obtained prior salary information in determining applicant's salary. NCDA&CS has adopted the provisions of EO #93. HR staff has been trained in the new salary administration requirements. Discussion in agency-wide staff meetings with executive and division management have been led by HR management and disseminated throughout the organization through various communications channels.

The Human Resources - EEO section reviews trends and data to monitor impacts of policies in all phases of employment, beginning with recruitment. Based on information from management regarding professional organizations, colleges and universities, and other

organizations, NCD&CS Human Resources' Employment, Classification and Compensation Section will work with division management and the NCD&CS EEO Officer to establish procedures to distribute job postings to various organizations, including colleges and universities and professional organizations that represent veterans, minorities, and people with disabilities. Management, with the assistance of NCD&CS Human Resources, Classification and Compensation and EEO Sections will establish relationships with schools, colleges, universities and professional organizations who offer diversity programming, including career and job fairs focused on veteran, disabled and minority graduates and other individuals who may be interested in employment in the various occupational groups utilized within the NCD&CS divisions.

The Human Resources – EEO section encourages managers to work with recruitment to review and revise job descriptions and postings to attract a diverse pool of well qualified applicants.

b. Selection

Follow the State's recruitment and selection guidelines, ensuring that all steps in the selection process are non-discriminatory and job-related. (Attachment 3: NCD&CS Merit Based Recruitment Plan)

The NCD&CS's EEO Plan includes a selection process with the following objectives:

- Ensure that job analyses are conducted to establish job-related qualifications statements, selection criteria, training needs, and career ladders or to initiate any other selection procedure. The EEO team maintains a database of approved competency-based interview questions for managers to utilize.
- Cooperate with the OSHR or other trained resources as needed on the review and validation of written tests, interviews, or other selection criteria.
- Establish training for employees who interview applicants for employment in proper interviewing techniques and on requirements of Merit Based Hiring.
- Establish sign-off procedures to ensure that the selection process in underrepresented occupations reflect established program objectives and timetables; and
- Analyze the flow of applicants through the selection and appointment processes, Determining reasons for the rejection of qualified applicants from underutilized groups in areas where program objectives have been set or underrepresentation exists, and monitoring the employment of individuals to ensure that assignment of work and workplace is non-discriminatory. These reasons are identified through EEO review of hiring packages. EEO consultants request additional documentation if needed and informs management of trends that require further evaluation.

c. Onboarding

Provide the same level of orientation to all new employees, to ensure their understanding of the agency's organizational structure and their role.

NCD&CS Human Resources administers a structured, uniform orientation program to all new employees. The following topics are presented at orientation and/or included in online modules to all new employees: the State of NC benefits package and NCD&CS optional benefits, including benefits plan details and enrollment procedures; navigation of the

Integrated HR-Payroll System, including time entry, Learning Management System, and NC VIP Performance Management System; NCDA&CS Safety; Training; overall organizational structure of NCDA&CS and the mission, vision and purpose of NCDA&CS, and workplace policies, including NCVIP Performance Management Policy, NCDA&CS Time & Attendance Policy, Acceptable Use Policy (Computer Use, Email, confidentiality of information contained in information systems, IT Security Training), Equal Employment Opportunity, Unlawful Workplace Harassment, Workplace Violence Policy, Disciplinary Action Policy, Employee Grievance Policy, Public Records Overview, Use of State Property Overview, and the NCDA&CS Drug Free Workplace, Controlled Substance and Alcohol Testing Policy. The NCDA&CS Human Resources Onboarding and Orientation Review Team (OORT) looks at feedback received from new employee participants and continues to support agency initiatives in this area, submitting improvements to onboarding and orientation processes for management approval and developing appropriate training offerings. The agency quickly shifted to a virtual orientation in 2020 due to the pandemic and we continue to provide new employee orientation in this format, which has proven to provide increased accessibility. OORT continues to focus on further enhancing employee satisfaction and success. The OORT is considering implementing quarterly regional in-person orientation to engage with employees to build positive relationships with HR staff.

d. Promotion

Enhance upward mobility and fully utilize the skills of the existing workforce in a non-discriminatory manner.

The EEO program impacts not only recruitment, selection, and hiring but also in providing promotion and the upward mobility of underutilized groups. It is equally unlawful to fail to provide an equal opportunity for upward mobility to all employees as to fail to offer an equal opportunity for employment. All NCDA&CS employees are informed of all employment opportunities, including promotional/upward mobility by e-mail which is distributed to all employees.

When promotional opportunities exist in occupational categories where there is established underrepresentation of minorities, women, and persons with disabilities, and the selection decision will be made from among applicants in the existing state workforce, hiring authorities shall consider and support these diversity needs.

In addition, promotional priority consideration shall be provided to all current State employees who have achieved career status. If it is determined that an eligible employee and an outside applicant have "substantially equal qualifications," then the eligible employee must receive the job offer over an outside applicant. "Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.

Review of hiring decisions by the EEO team ensures that the selection process in occupational categories where there is underrepresentation reflects established program objectives. Through EEO review of hiring packages, the selection and appointment process, reasons for the rejection of qualified applicants from underutilized groups in areas where program objectives

have been set or underrepresentation exists shall be noted. This same procedure applies to promotional selection. One of the goals of implementing a more comprehensive review is to further our commitment to giving life to our annual EEO Plan.

e. Training

Enhance employee development and advancement opportunities to be demographically inclusive at all levels. (Attachment 4: NCDA&CS Mandatory and Recommended Training)

The NCDA&CS Human Resources, Learning & Performance section, administers training without bias by assigning and regularly monitoring training records of all NCDA&CS employees, and by giving thoughtful consideration to diversity, equity, and inclusion when selecting and developing training and related tools. The team ensures that required training assignments are made and completed in a consistent and timely manner and works closely with NCDA&CS Division Management to identify training needs, resources and potential obstacles to training, and work with management to remove obstacles and resolve any issues that would hinder employee development. All NCDA&CS employees are required to complete NCDA&CS Unlawful Workplace Harassment Prevention training online annually.

AGR Cultivate the Leader in You: Recruitment & Selection Training, continues to be a requirement for all NCDA&CS staff engaged in the hiring process, including those hired into manager/supervisor position. The curriculum includes the NCDA&CS Standard Operating Procedure for Hiring, along with the following online modules:

[Are Your Job Postings Excluding Great Candidates?](#)

[Eliminate Discrimination in Recruitment](#)

[Inclusive Recruitment Includes Managers](#)

[Write Behavior-Based Interview Questions](#)

[Ask Relevant Questions to Potential Candidates](#)

This curriculum is a preliminary training that was implemented while a more comprehensive recruitment and selection training is being developed by the Learning and Performance team in collaboration with the Recruitment team. This training will provide hiring managers and supervisors education and information regarding administering the EEO plan in the selection process. Part of the more comprehensive review of hiring packages includes training for supervisors and managers to educate them on all aspects of EEO as related to the hiring and selection process to include: the legal basis for EEO; interpreting and applying EEO policies and guidelines; and providing guidelines for valid and legal selections procedures.

A new leadership program developed by the Learning and Performance section and the Deputy HR Director completed the pilot phase and went live department-wide in 2022. The curriculum, which is titled “Cultivate Your Strengths”, is grounded in comprehensive, research-based programming and tools which focus on increasing awareness of diversity, equity, and inclusion. This leadership development program provides strategies to demonstrate the “meets” and “exceeds” expectations descriptions for the Diversity & Inclusion value included in the State of NC NCVIP Performance Management plan for all employees.

f. Compensation and Benefits

Ensure that all employees receive compensation and benefits without discrimination by analyzing practices to determine patterns and trends.

A structured, uniform procedure has been implemented by NCDA&CS Human Resources, Classification and Compensation Section, to ensure fairness and equity in the administration of compensation. Criteria given consideration for salary recommendations includes related education, training, and experience (paid and volunteer). In addition, salaries of current employees performing similar duties and responsibilities are considered. Also, the NCDA&CS Human Resources Benefits Section ensures that State of NC and NCDA&CS benefits are equally available without discrimination, which includes leave policies, retirement plans, insurance programs, and other terms and conditions of employment.

g. Performance Management

Hold managers and supervisors accountable for the progress of the agency's EEO program by including it as an expectation on their annual workplans and performance evaluations. Ensure performance management system, including employee performance standards, are free from bias.

It is the policy of North Carolina State Government to provide a performance management system which evaluates employees' accomplishments and behaviors related to goals and organizational values to achieve organizational mission, goals, and business objectives. An integrated performance management system enables employees to develop and enhance individual performance while contributing to the achievement of organizational mission, goals, and business objectives. The performance management process involves three stages: performance planning, performance feedback, and the annual performance evaluation. NCDA&CS Human Resources administers the performance management process in accordance with the performance policy approved by the State Human Resources Commission and in accordance with the State EEO Policy. The Department does not discriminate in the terms and conditions of employment and monitors compliance with the NCVIP system to ensure the process is free from bias, including monitoring employee's ratings to identify trends and patterns. This is accomplished by an annual NCVIP audit performed by ER/EEO and Learning & Performance teammates.

h. Transfers and Separations Including Reduction-In-Force

Identify trends and measure impact on underutilized groups.

The NCDA&CS Human Resources implements a structured and uniform procedure for determining the primary reasons employees voluntarily transfer and/or separate from the agency. This procedure involves conducting exit interviews with departing employees or obtaining information by utilizing post transfer or separation questionnaires. The ER Manager/EEO Officer conducts an analysis of the information collected and shares with executive management through the HR Director for workforce planning purposes and to alert them of any conditions that need attention.

i. Disciplinary

Provide equitable treatment for all employees in accordance with the Employee Disciplinary, Appeal and Grievance policy. (Attachment 5: Disciplinary Action Policy)

It is the intent of the NCDA&CS to comply with the policies of the State Human Resources Commission. To this end, disciplinary action is administered in accordance with the Disciplinary Action Policy, in the State Human Resources Manual, which reads:

“State employees are expected to meet performance standards and conduct themselves appropriately. This policy is intended to provide tools for addressing employee conduct and performance issues in a reasonable, consistent, and effective manner.

The procedures in this policy provide for progressive discipline to address issues involving unsatisfactory job performance for employees to be given notice of deficiencies and an opportunity to improve them. However, this policy also recognizes that some employee conduct occurring either on-duty or off-duty is so egregious and intolerable that continued employment is not a possibility and progressive discipline is not appropriate. Behavior of this type is considered either unacceptable personal conduct, which can be either on-duty or off-duty, or in the case of on-duty behavior, grossly inefficient job performance.

The imposition of any disciplinary action shall comply with the procedural requirements of this policy.

There are two bases for the discipline or dismissal of employees under the statutory standard for “just cause” as set out in NCGS 126-35. These two bases are:

- 1. Discipline or dismissal imposed on the basis of unsatisfactory job performance including grossly inefficient job performance; and*
- 2. Discipline or dismissal imposed on the basis of unacceptable personal conduct.*

The categories are not mutually exclusive, as certain actions by employees may fall into more than one category, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.”

A structured, uniform procedure has been implemented by NCDA&CS Human Resources, and the policy and procedures are administered by the NCDA&CS Employee Relations / EEO Manager and Consultant, to ensure fairness, consistency, and equity in the administration of disciplinary action.

Employees are notified of all changes to the Disciplinary Action Policy at least 30 days prior to the effective date of the change, through training, dissemination of the policies to managers and supervisors, and through contact with the Department's Human Resources Representatives. An overview of the policy is also presented during new employee orientation.

Monitoring of Disciplinary Actions: NCDA&CS Human Resources Employee Relations Section will monitor disciplinary actions Department-wide to ensure fairness and consistency in the issuance of disciplinary actions. The office will conduct in-depth analysis of disciplinary actions issued disproportionately to members of protected classes compared to their workforce representation in the Department. Analysis of the results will provide opportunities to develop strategies for reducing any adverse impact found. A quarterly Disciplinary Actions Monitoring Report will be distributed to Department business units as needed. It will include analyses of the supervisors issuing disciplinary actions, interval data for the issuance of subsequent actions, the jobs to which the actions were issued, and the reasons actions were taken where the disciplinary actions issued exceed any gender/ethnic group's workforce representation by more than 2 percentage points within the Department or the business unit.

j. Grievance

Ensure fair and equitable review of complaints in accordance with the State Employee Grievance policy. (Attachment 6: Employee Grievance Policy)

It is the intent of the NCDA&CS to comply with the policies of the State Human Resources Commission. To this end, NCDA&CS provides a written procedure for completing an employee grievance. This procedure provides the steps of communication between supervisors and employees and uniformity in processing a grievance or appeal, and is administered in accordance with the Discipline/Appeals/Grievance Policy, in the State Human Resources Manual, which reads:

"It is the policy of North Carolina State government that a grievance process exists to allow for prompt, fair and orderly resolution of grievances arising out of employment. Each agency shall adopt the Employee Grievance Policy as approved by the State Human Resources Commission. Agencies may supplement this policy by developing additional internal procedures beyond the informal discussion process for issues that may only be grieved at the agency level."

A structured, uniform procedure has been implemented by NCDA&CS Human Resources and is administered by the NCDA&CS Employee Relations / EEO Manager and Consultant, to ensure fairness and equity in the administration of the grievance procedures.

8. Equal Employment Opportunity and Diversity Fundamentals (EEOFDF)

Enroll managers and supervisors in the Equal Employment Opportunity and Diversity Fundamentals (EEOFDF) within one-year of their appointment.

Training for managers and supervisors is critical to the success of NCDA&CS's EEO program. Managers and supervisors implement EEO goals through their employment decisions (selection for hiring and promotion, training, reallocation, demotion, and transfer). They must be trained on the effective fulfillment of their EEO responsibilities. The elements of this training program include:

- Definition of equal employment opportunity.
- Legal basis for EEO.
- Interpreting and applying EEO policies and guidelines.
- Guidelines for valid and legal selection procedures.
- Identifying and eliminating artificial barriers that can lead to discrimination.
- Implementing EEO Plan and program; and
- Managing diversity in the workforce.

In accordance with N.C.G.S. §126-16.1, NCDA&CS is required to enroll supervisors and managers in EEO and Diversity Fundamentals (EEODF, formerly the Equal Employment Opportunity Institute - EEOI) or other approved equivalent course. EEO and Diversity Fundamentals is intended to provide managers and supervisors with practical training to assist them in becoming more effective managers and supervisors of an increasingly diverse workforce. Managers and supervisors hired, promoted, or appointed shall enroll in this course within one year of their appointment. The NC Office of State Human Resources, via the LMS system, dynamically assigns EEODF training to all NCDA&CS managers and supervisors. This training is to be completed within one year of their first appointment to a supervisory position. The NCDA&CS Human Resources Division, Learning and Performance section regularly monitors training records and tracks completion to ensure that EEODF assignments are completed in a timely manner. All EEO committee members complete EEODF training and the training is made available by request to those who participate in the Certified Public Manager Program or in their assigned role may assist or support managers in any duties applicable to EEO policy, rules, or procedures.

To bridge the gap created when the Agency's only EEODF Certified Facilitator retired in December 2022, the Employee Relations/EEO Consultant and the Assistant HR Director will begin EEODF Facilitator certification in 2024.

9. Reasonable Accommodation

(Attachment 7: Reasonable Accommodation Policy)

In March 2019, Governor Roy Cooper signed Executive Order (EO) #92 (Employment First for North Carolinians with Disabilities) and NCDA&CS adopted provisions of the Executive Order. NCDA&CS complies with federal and state laws governing reasonable accommodation (ADA, ADAA, Title VII of the Civil rights Act as amended, EO #92, the Pregnancy Discrimination Act of 1978, EO #82, and the State of NC Reasonable Accommodation Policy).

The NCDA&CS Reasonable Accommodation Procedure provides a uniform written procedure for processing a request for accommodation in accordance with the Reasonable Accommodation Policy found in the State Human Resources Manual. This procedure provides the steps of communication between supervisors, employees and Human Resources, and uniformity in processing an accommodation request, ensuring that requests are addressed

timely, fairly, and consistently. The NCDA&CS will encourage employees to complete the Voluntary Self-Identification of Disability form in the Integrated HR/Payroll System.

On June 27, 2023, a new federal law, The Pregnant Workers Fairness Act (PWFA), came into effect. This law requires covered employers to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodations will cause the employer an “undue hardship.” Since its inception, the ER/EEO office has incorporated this law into our internal procedures and has engaged in the interactive process for two (2) eligible employees.

10. Program Evaluation, Reporting & Monitoring

The EEO Officer and/or designee will conduct an evaluation on an annual basis using the categories listed under workforce analysis. Division Directors will ensure they provide the EEO Officer and/or designee, the appropriate information in a timely fashion. The EEO Officer and/or designee will then analyze the information and provide a report to the Commissioner, Chief Deputy Commissioner, Human Resources Director, and a Division specific report to the Division Directors. The report will include areas where they need improvement according to the principles set forth by the EEO federal laws, state laws, state policies and departmental policies.

The EEO Officer and/or designee is tasked with monitoring the EEO Plan on a continual basis through regular departmental analysis. If any disparities are found, the EEO Officer will immediately report their finding to the Human Resources Director, Chief Deputy Commissioner and Commissioner. Data is collected in the exit interview surveys and regularly analyzed and shared with senior management. A process for review of hiring and promotion practices to ensure decisions are based on job-related abilities using a standardized process has been implemented.

To evaluate the progress of the Department in implementing its plan, the Human Resource Director will be responsible for regularly compiling statistics on new hires, promotions, and educational opportunities. These reports will be reviewed quarterly by the EEO Officer and/or designee, who will make recommendations to the Human Resources Director, Chief Deputy Commissioner, and Commissioner so that remedial action may be taken as needed. The EEO Officer and/or designee will use the following data sources to generate necessary reports by race, sex, age, and disability status, when available:

- NEOGOV applicant tracking data
- BOBJ transactional reports for compensation, hiring, separations, promotions, disciplinary action, grievances, performance evaluation ratings, and other employee actions
- NCVIP data for performance evaluation ratings
- Internal tracking reports such as selection/decision log, adverse impact analysis or other related information.

11. Harassment Prevention and Strategies

(Attachment 8: Unlawful Workplace Harassment Policy)

It is the intent of the NCDA&CS to comply with the policies of the State Human Resources Commission. To this end, the NCDA&CS Unlawful Workplace Harassment Procedure is administered in accordance with the Unlawful Workplace Harassment Policy in the State Human Resources Manual, which reads:

“All employees have the right to work in an environment free from discrimination and harassing conduct. No State employee shall engage in conduct that falls under the definition of unlawful workplace harassment, including sexual harassment discrimination, or retaliation, and no employment decisions shall be made on the basis of race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability.”

The policy establishes a grievance process, in accordance with the Employee Grievance Policy in the State Human Resources Manual and detailed in the NCDA&CS Unlawful Workplace Harassment Procedure. The Unlawful Workplace Harassment Policy and the Employee Grievance Policy are referenced during new employee orientation. During orientation, new employees are advised that the NCDA&CS has a zero tolerance for Unlawful Workplace Harassment and employees are required to report such behavior to the ER/EEO office.

Prevention strategies are included in NCDA&CS Unlawful Workplace Harassment Procedures:

- Post the State of North Carolina and the NCDA&CS EEO Policy Statements on the NCDA&CS Intranet.
- Require all employees, no matter their status, to complete annual online Unlawful Workplace Harassment training.
- Managers should ensure that their employee(s) complete the training annually to guarantee their personnel are continually refreshed on workplace harassment and their rights. Managers should reinforce the Unlawful Workplace Harassment policy throughout the year during meetings and whenever appropriate. Work areas that show a need for training may be mandated by management to complete instructor-led training.
- Require all new employees to attend orientation and complete the orientation curriculum in the Learning Management System where they are introduced to the policy and prevention plan and sign an acknowledgement form.

12. Reduction-In-Force

(Attachment 9: Reduction-In-Force Policy)

In accordance with the Reduction in Force policy found in the State Human Resources Manual, the NCDA&CS has the authority to separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a position, or other material change in duties or organization. NCDA&CS complies with the State Human Resources Reduction in Force policy. Retention of employees in classes affected shall be based on systematic consideration of all the following factors: type of appointment, needs of the agency to deliver services, relative efficiency, length of service and actual or potential adverse impact on the diversity of the workforce. Employees who are temporary, probationary or trainee (in their initial six months of training) shall not be retained in classes where employees with a permanent appointment

(those who have satisfactorily completed a probationary or equivalent trial period) must be separated in the same or related class. In any case, an employee may not be separated due in any part to their membership in a protected class. Protected classes include the following: race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability.

An employee may appeal the separation through reduction if it is alleged that the separation is in retaliation for the employee's opposition to alleged discrimination against the employee on account of the employee's race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability. Employees may appeal in accordance with the State of N.C. Grievance Policy. Pursuant to the State Human Resources Manual, employees with career status (as defined by GS 126-1.1), who have received official written notification of imminent separation due to reduction in force are eligible for priority consideration under the provisions outlined in the Manual. An employee shall receive priority consideration for a period of 12 months from the date of the official written notification.

The EEO Officer through the Human Resources Director and/or designee will monitor the potential adverse impact of the proposed reduction list submitted by the Division Director and discuss with the Division Director the potential adverse impact emphasizing effects the reduction will have on workforce diversity.

13. Pregnancy Workplace Adjustments (EO82)

After its release in December 2018, Executive Order 82 was disseminated to the Agency through Division HR Representatives who were instructed to post in common areas where employees and/or the public may congregate. The Agency has been committed to upholding the Pregnancy Discrimination Act of 1978, which prohibits unfavorable treatment of a covered individual because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, and will continue to extend workplace protections and modifications to pregnant, Agency employees upon request. In addition, Agency Reasonable Accommodation procedures will be utilized to implement additional workplace adjustments that will further promote physical and mental health of pregnant workers.

A state-of-the-art mother's room or nursing room has been established at the newest NCDA&CS facility, the Steve Troxler Agricultural Sciences Center. NCDA&CS EEO officer and Division HR Representatives continue to have discussions as needed to ensure rooms are established according to the requirements of the executive order.

Education initiatives to inform employees of this Executive Order include:

- Inclusion of requirement in new employee orientation
- Email and other communications to employees
- Discussion of requirements at staff meetings

14. Prohibiting the Use of Salary History (EO93)

In April 2019, Executive Order #93 (Prohibiting the Use of Salary History in the State Hiring Process) was issued by Governor Roy Cooper. This Executive Order prohibited state agencies from requesting salary history from applicants or relying on previously obtained prior salary information in determining an applicant's salary. OSHR was required to remove the employment history fields from the state application. This Order specifically required that state agencies collect and compile information regarding their efforts to educate relevant staff about this EO and provide this information to OSHR in their annual EEO Plan.

Since that time, NCDA&CS has ensured that all HR staff have been trained in the new salary administration requirements. In addition, the requirement has been discussed in agency-wide staff meetings with executive and division management led by HR management and disseminated throughout the organization through various communications channels, including revisions to all related internal procedures.

SECTION III. Data Elements

(Attachments 10-18 used for analysis in the Data Elements Section)

a. Recognizing the Value of Experience in State Government Hiring (EO278)

Effective June 1, 2023, EO278 (Recognizing the Value of Experience in State Government Hiring, was issued by Governor Roy Cooper. This Executive Order directs the NC Office of State Human Resources (OSHR) to create processes to identify job classifications that do not require academic degrees and train agency human resources (HR) personnel on how to properly screen applications to broaden access to career opportunities in state government. This Executive Order will help agencies address ongoing challenges in recruiting and retaining the skilled workforce essential to ensuring North Carolinians have safe, effective and efficient government programs and services. It will also help agencies continue active recruitment of qualified candidates who can apply directly related knowledge and skills from prior jobs and experiences to positions across the state. This Order specifically required that state agencies add the following language to all job postings: "equivalent combination of education and experience. If that language appears below, then you may qualify through EITHER years of education OR years of directly related experience, OR a combination of both."

Since that time, NCDA&CS has ensured that all HR staff have been trained and understand how directly related experience may be counted toward meeting minimum qualifications.

b. Workforce Availability

NCDA&CS determines workforce availability in equal employment opportunity planning by using the Labor Force Analysis method. The first step to conducting a labor force analysis is to identify the Standard Occupational Classification (SOC) categories in which underutilization exists. The Office of State Human Resources (OSHR), through the Integrated HR/Payroll System, provides data on the distribution of workers in each agency workforce. The Business Objects (BOBJ) B0170 report automatically calculates utilization rates using census data. In addition, another report (B0029) is used in identifying the specific State job classifications in the agency workforce that are included in each SOC category. The BOBJ reports are the required source data for the labor force analysis.

B0170 identifies the number and percent of minority/ethnic groups and female incumbents NCD&CS has in each SOC Category and Subcategory, as well as the number and percent expected based on the labor force, which is determined using census data. A comparative analysis of this information determines whether underrepresentation of one or more employee groups exist. If underrepresentation does exist, numerical goals, program objectives, and action plans are developed to address underrepresentation. Underrepresentation is said to exist when the percentage of employees in a sex and race/ethnic group for a given state EEO category is less than the percent of that sex and race/ethnic group of working age in the labor force for that category. For the purposes of the workforce availability analysis, the following race/ethnicity categories are used with each racial group presented by both Male and Female:

1. **White** (Non-Hispanic or Latino) – All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
2. **Black or African American** (Non-Hispanic or Latino) - A person having origins in any of the black racial groups of Africa.
3. ***Hispanic or Latino** - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
4. ***Asian** (Non-Hispanic or Latino) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
5. ***American Indian or Alaska Native** (Non-Hispanic or Latino) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
6. ***Native Hawaiian or Other Pacific Islander** – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

*In some of the reporting, NCD&CS may combine Hispanic, Asian, American Indian or Alaska Native, and Native Hawaiian or Other Pacific Islander together into a single group called “Other Minority.”

c. Agency Occupational Categories

As of December 31, 2023, the NCD&CS has approximately 1736 SHRA (Subject to the HR Act) and EHRA (Exempt from the HR Act) employees and 164 supplemental employees for a total of 1900 employees. The Department is comprised of the following six sections (with primary divisions listed in parenthesis):

- Commissioner’s Office (Chief of Staff, Public Affairs, and Agency General Counsel);
- Administration (Policy and Legislative Development, Internal Audit, Agricultural Development/Farmland Preservation, State Fair, Public Safety, Information Technology, Agricultural Statistics, Budget & Finance, Human Resources, and Property and Construction);
- Consumer Protection (Emergency Programs, Food & Drug, Meat & Poultry Inspection, Standards, Structural Pest Control & Pesticides, Veterinary, and Agricultural Sciences);
- Agricultural Services (Agronomic Services, Food Distribution, Marketing, Plant Industry, Research Stations, and Soil & Water Conservation);
- Western NC Agricultural Programs (Small Farms, Western NC Farmers’ Market, and Western Agricultural Center); and
- NC Forest Service.

These divisions have responsibility for providing regulation and services covering agronomy; animal health; weights and measures; gas and oil inspection; crop and livestock statistics; USDA commodity distribution; state farm operations; food, drug and cosmetic testing for purity; agricultural marketing and promotion; agricultural marketing grading; international agricultural crop and livestock marketing; operation of the North Carolina State Fair and North Carolina Mountain State Fair; operation of four state farmers' markets; research station operations; seed and fertilizer inspection; nursery and plant pest eradication activities; regulation of the structural pest control industry; agricultural environmental issues; soil and water conservation; forest management and protection; state and federal agricultural legislation; and agricultural economic analysis.

Since NCDA&CS has specific State job classifications in all SOC Categories, the department conducts workforce analysis using the eight (8) SOC categories listed below:

1. **Officials and Administrators** - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district or area basis.
2. **Professionals** - Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.
3. **Management Related** – Occupations which support the internal operations of an agency, department, or facility.
4. **Technicians and Technologists** - Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training.
5. **Administrative Support** - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office.
6. **Protective Services** - Occupations in which workers are entrusted with public safety, security, and protection from destructive forces.
7. **Service** - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene, or safety of the public or which contribute to the upkeep and care of buildings, facilities, or grounds of public property.
8. **Skilled Craft** - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the process involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs.

d. Program / Employment Objectives

(See Attachment 12: B0170 Labor Force Standard as of Dec 2023 and Attachment 13: NCDA&CS Job Opening Estimate forms)

e. Attainment of Employment Objectives

(Attachment 14: EEO Quantitative Analysis Form; Attachment 15: B0170: Labor Force Standard by SOC as of Dec 2023; Attachment 16: B0170: Labor Force Standard by SOC as of Dec 2022)

Comparison of the 2022 and 2023 B0170 Report reflects the following:

SOC Category	White+ Male		White+ Female		Black Male		Black Female		Other Minority Male		Other Minority Female		2022 Total	2023 Total	% change
	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023			
Officials & Administrators	61	58	35	36	2	3	3	4	2	1	4	5	107	107	0.0%
Management Related	34	35	63	61	5	6	7	10	1	1	2	1	112	114	1.8%
Professional Specialty	265	253	109	99	9	7	7	7	12	11	16	16	418	393	-6.0%
Technicians & Technologists	88	77	48	46	3	6	11	9	4	4	2	2	156	144	-7.7%
Administrative Support	29	27	128	131	3	1	26	23	0	0	6	8	192	190	-1.0%
Protective Services	84	80	0	1	3	4	0	1	1	2	0	0	88	88	0.0%
Service	14	14	22	21	2	2	3	2	4	4	1	2	46	45	-2.2%
Skilled Crafts	504	497	75	84	23	20	15	16	76	25	6	10	699	652	-6.7%
TOTAL EMPLOYEES	1,079	1,041	480	479	50	49	72	72	100	48	37	44	1,818	1733	-4.7%

While some 2023 employment objectives were met, others were not met or only partially met. Challenges to implementing these targets include ongoing instability caused by the Covid-19 pandemic, adverse impact or unintended results of policy or policy interpretations, shifts and trends in the economy, employment preferences by jobseekers (including the “Great Resignation”), and budgetary constraints, specifically limited funding for salaries. Salary/budget restrictions have resulted in pay inequities and low starting salaries, which pose problems for managers attempting to hire the most qualified applicants. This continues to limit our ability to hire diverse and highly qualified applicants; however, the implementation of the new compensation system may have somewhat improved our ability to recruit and retain diverse and highly qualified applicants. Some of the highly technical positions are hard to fill due to scarce labor resources, and highly qualified candidates have continued to reject insufficient salary offers. Due to budgetary pressures created by the COVID-19 pandemic, some positions, particularly receipt funded positions, were subject to reduction-in-force. During 2023, we noticed that some of the applicants deemed most qualified are not responding to our requests for interviews or withdraw prior to the interview.

NCDA&CS saw a decrease in the total number of employees from 2022 to 2023. The vacancy rate is currently approximately 11.73%. External factors continue to give uncertainty, based in part on job market trends, ongoing circumstances related to the pandemic and associated challenges in recruitment of most highly qualified diverse applicants in 2023. Historically, agriculture has been a male dominated industry, and many of the jobs do not easily translate into a remote or hybrid model that many applicants in today’s job market are seeking. Even with the downward trends in the job market, the largest reduction was in the demographic of Other Minority Male, -52 from 100 to 48, followed by White Male, -38 from 1079 in year 2022 to 1041 in 2023. The number of White Female agency-wide increased +6, Black Female remained the same and Black Male decreased by -1 total during the same time. The most significant increase occurred in the group of “Other Minority Female” (an increase of 7 employees). Hispanic, Asian, and American Indian or Alaska Native comprise a single group called “Other Minority.” We will continue to move forward setting attainable goals to diversify our workforce.

The results of specific employment objectives set for 2023 by SOC Category are noted as follows:

In the SOC Category **Officials & Administrators** goals to hire one (1) white female, (1) minority female, and one (1) minority male were set for 2023. These three goals were met

as shown by a gain of six (3) females and three (3) minorities in this SOC Category. Specifically, there was a gain of one (+1) white female, one (+1) black female, and one (+1) minority female, and one (+1) black male during 2023.

In the SOC Category of **Management Related**, seven possible vacancies for 2023 were identified in the classifications of Procurement Specialist I, II, or III, Drug Regulatory Specialist, Program Coordinator, HR Consultant III, Internal Auditor I and Marketing Specialist I. Hiring a white female was a goal set for 2023 for the Procurement Specialist I classification, which was met. Hiring two black females in the positions of Procurement Specialist II, which was met. The Procurement Specialist III was vacant at the end of 2023. Hiring a white female was the goal set for the Drug Regulatory Specialist, which was met. Hiring a Hispanic male was the goal set for the HR Consultant III position, which was not met. The goal set for both the Internal Auditor I and Marketing Specialist I positions was to hire a black female. The goals for both the Internal Auditor I and Marketing Specialist I positions were not met. Overall, the **Management Related** category experienced increases of four (+4) females and a decrease of one (-1) minority employee from 2022. On a positive note, black male employees in this category increased by one (+1) in 2023.

In the SOC Category of **Professionals**, for 2023, 13 possible vacancies were identified in the classifications of Application System Analyst I, User Support Specialist, Forester I, Agricultural Program Specialist I, II, III, Agricultural Program Technicians I, II, Agricultural Research Specialist, Chemist and Graphic Designer I. Hiring two (2) white males and three (3) white females was the goal set for 2023 for the Application System Analyst I, User Support Specialist and Forester I positions, which was not met. The goals set for the Agricultural Program Specialist I, II, III, Agricultural Program Technicians I, II, Agricultural Research Specialist, and Chemist positions were to hire one (1) white female, two (2) black females, one (1) Asian male, three (3) Asian females and one (1) American Indian/Alaskan Native female, which were not met. The goal set for the Graphic Designer I position was to hire one black female, which was not met. Overall, the Professionals category the total number of white males declined by 12, the total number of white females decreased by ten (-10), the total number of black males decreased by one (-1), and the total number of minority males decreased by one (-1).

In the SOC Category of **Technician & Technologists**, the overall goals set for 2023 were to hire three (3) white females, three (3) black females, one (1) black male, one (1) Hispanic male and one (1) Hispanic female. The goal set for hiring white females, black females, Hispanic females, and Hispanic males were not met. However, overall, black males increase by three (+3) in 2023.

In the SOC Category of **Administrative Support**, anticipated vacancies in the following classifications were identified in 2023: Accounting Technician II, Administrative Associate II, Administrative Specialist I, II, and Administrative Officer I. The overall target for this category was to hire five (5) white males, five (5) black males, four (4) black females, three (3) Asian females and four (4) Hispanic females, (4) Hispanic females. When compared to 2022, overall, white females increase by three (+3) and other minority females increase by two (+2) in 2023. However, there was an overall decline in white males by two (-2), black males by one (-1) and black females by three (-3).

In the SOC Category **Protective Services**, five (5) Forest Fire Equipment Operator vacancies were anticipated, with the goal set to hire five (5) black males. Although this goal was not met, black males did increase by one (+1) in this classification. there was an increase in black males in this classification by Overall, females in this category increased by two (+2) And there was a significant decrease in white males of four (-4).

In the SOC Category **Service**, overall, in this category the goal set for 2023 was to hire two (2) minority males (black male and Hispanic male) and four (4) minority females (black females, Asian female and Hispanic female). Overall, minority females in this category increased by one (+1) and male minorities held steady with no change from 2022.

In the SOC Category of **Skilled Craft**, vacancies were anticipated in the following target classifications: VERT I, II; Construction/Maintenance Technician I, II, III; General Utility Worker; Aircraft Mechanic I; Agriculture Inspector; Agriculture Emergency Program Specialist; Agriculture Compliance Officer I, II; Pesticide Inspector; Forest Tech I, II; and Animal Health Tech I. Overall in this category, the goal was set to hire two (2) white males; three (white females); seven (7) black males; six (6) Hispanic males; one (1) Hispanic female; one (1) female of any ethnicity; and one (1) veteran. During 2023, we saw a significant decrease of (-51) in overall males; however, there was increase in overall females by (+14).

f. Additional Areas of Statistical Evaluation

VETERAN PLACEMENT

A component for the 2024 EEO Plan is an emphasis on the employment of applicants identifying as veterans or national guard members with current or previous service. NCDA&CS will continue to encourage veterans to self-identify. In addition, NCDA&CS will monitor compliance with the veterans’ preference policy through documentation and EEO review of employment packages prior to commitment.

There was a slight decrease in the number of veterans employed from the previous year. In 2022, there were 98 veterans employed, representing approximately 5% of the agency’s total employed. In 2023, there were 101 veterans employed, representing approximately 5.3% of the agency's total employed.

Year	Veteran Status	Protected Veteran	Special Disabled Veteran	Vietnam ERA Veteran	Other Protected Veteran	Recently Separated Veteran	Armed Forces Service Medal Veteran	Disabled Veteran	Not a Protected Veteran	Separated Veteran	Retired Veteran
2022	X	34	3	7	43	5	1	5	12	13	4
2023	X	41	3	6	41	6	1	9	13	15	6

Percentage of Candidates By Veteran

January 01, 2023 - December 31, 2023

Veteran	Applied	Eligible	Referred	Interviewed	Offered	Hired
No	421146 (86%)	152004 (79%)	149438 (79%)	27654 (86%)	12337 (88%)	9971 (88%)
Not Answered	45034 (9.2%)	30728 (16%)	30411 (16%)	2796 (8.6%)	944 (6.8%)	839 (7.4%)
Yes	25686 (5.2%)	10028 (5.2%)	9778 (5.2%)	1885 (5.8%)	702 (5%)	579 (5.1%)

Source NEOGOV

PERSONS WITH DISABILITIES PLACEMENT

Another component for the agency EEO Plan is an emphasis on the employment of persons with disabilities in compliance with federal and state laws, including Executive Order #92 signed in March 2019. North Carolinians with disabilities represent a significant percentage of the state’s population and experience disproportionate levels of unemployment. To support and encourage individuals with disabilities to find employment, NCDA&CS will continue to identify employment objectives and recruitment strategies aimed to attract qualified applicants with disabilities. Among other strategies, NCDA&CS works through its HR Department to encourage greater self-identification by persons with disabilities to obtain more accurate workforce representation numbers. Since implementing the self -identification featured in Employee Self Service we continue to see an increase in the number of persons reporting a disability.

State agencies or other organizations that provide resources, like Vocational Rehabilitation Services for Employers, HBCU institutes of learning or minority organizations with job boards or other method of disseminating postings and other entities such as <https://ndcc.simplifyhire.com/> that can potentially help with recruitment of persons with disabilities are being identified and will be utilized for job postings when appropriate.

Persons with Disabilities Analysis			
Year	Total Positions	Number Disabled	Percentage
2022	1767	44	2.49%
2023	1730	70	4.00%

2023 RECRUITMENT AND SELECTION

Source BOBJ Reports

	WM	WF	BM	BF	OMM	OMF	TOTAL
Representation	60.00%	28.00%	3.00%	4.00%	3.00%	2.00%	100.00%
Hired	52.00%	31.00%	6.00%	4.00%	4.00%	3.00%	100.00%
Promoted	59.00%	30.00%	4.00%	3.00%	1.00%	3.00%	100.00%

2023 DISCIPLINE AND DISMISSAL

Source BOBJ Reports

Disciplinary Action	WM	WF	BM	BF	OMM	OMF	TOTAL
Written Warning	13.0%	6.7%	0%	0%	0%	0%	19.7%
Suspended	53.0%	6.7%	6.7%	0%	6.7%	0%	73.1%
Demoted	0%	0%	0%	0%	0%	0%	0.0%
Dismissed	0%	6.7%	0%	0%	0%	0%	6.7%

PERFORMANCE MANAGEMENT (PM Cycle 2022-2023)

Source BOBJ Reports

Performance Management	WM	WF	BM	BF	OMM	OMF	TOTAL
Does Not Meet	0%	0%	0%	2%	0%	0%	2%
Meets	46%	32%	2%	2%	2%	2%	86%
Exceeds	2%	2%	2%	2%	2%	2%	12%

f. Identification and Correction

Under-utilization by SOC Categories and Sub-Categories was identified as follows, with most significantly under-utilized groups as of 12-2023 noted in parenthesis:

Officials and Administrators:

- **Officials and Administrators:** -14 Minority (Black Male, Black Female, Hispanic Male)
 - Goal of 1 Black Male, 1 Black Female and 2 White Females is set for 2023. Classifications are located throughout the agency and include Internal Auditor II; Ag Program Coordinator II; Metrology Laboratory Manager; Agricultural Program Specialist I; Administrative Associate II, Administrative Specialist I; Pesticide Inspector I; and Structural Pest Control Inspector.

Management Related:

- **Business Specialists (including Purchasing) Occupations:** -16 Minority (Black Female)
 - For 2024, goal of 1 Black Female and 1 Asian Male has been set. The classifications are Administrative Officer I and Systems Applications Analyst I.
- **HR, Training and Labor Relations Specialists:** -1 Female, -4 Minority (White Male, Hispanic Female)
 - A goal has been set in the Human Resources Office for 1 Black Male or 1 Hispanic female in the Staff Development Specialist II classification.

Professionals:

- **Computer and Mathematical Occupations:** -18 Female, -35 Minority (White Female, Hispanic Male, Black Male, Black Female, Asian Male)
 - A goal has been set to hire 1 Female and 1 Minority Male in the Applications Systems Analyst II Specialist II classification.
- **Architecture and Engineering Occupations:** -5 (Minority)
 - A goal has been set to hire 1 White Male or 1 Black Male in the Engineer I and II classifications.
- **Life, Physical and Social Science Occupations:** -35 Female, -27 Minority (White Female, Black Female, Asian Male, Asian Female)
 - Goals of 1 White Female, 1 Black Male, 2 Black Female, 4 Asian Males, 3 AIAN Male, 3 American Indian/Alaskan Native Females, and 1 AIAN Female have been set across the agency for 2024. Classifications include Chemist I and II, Safety Director I, and Environmental Specialist II.
- **Arts, Design, Entertainment, and Media Occupations:** -9 Minority
 - A Goal of 1 Hispanic Female Marketing Supervisor has been set for 2024.

Technicians & Technologists:

- **Life, Physical and Social Sciences Technology:** -23 Female (White Female, Hispanic Female, and Asian Female), -20 Minority (White Female, Black Male, Black Female)
 - Goals for 2024 include hiring 1 White Female, 1 Black Male, 1 Black Female, 1 Hispanic Male, 1 Hispanic Female, 1 AIAN Male, or 1 AIAN Female in the classifications of Metrologist I, Chemistry Technician I, Chemistry Technician II, and Quality & Safety Specialist I.

Administrative Support:

- **Administrative Support Supervisors:** -5 Female, -8 Minority (Black Male, Black Female, Hispanic Male, Hispanic Female, Asian Male, Asian Female, AIAN Male, AIAN Female)
 - Goals have been set to hire 2 White Females, 1 Black Female, 1 Asian Male, 1 AIAN Male, and 1 AIAN Female in 2024 in the classifications of Administrative Associate II and Administrative Specialist I.

Service:

- **Service Supervisors:** -5 Female, -6 Minority (White Female, Black Female, Hispanic Male, Hispanic Female, Asian Female, AIAN Male and AIAN Female)
 - Goals to hire 1 Hispanic Female, Asian Male or Female, or AIAN Male or Female in the classifications of Food Regulatory Supervisor and Labor Crew Leader
- **Healthcare Support Occupations:** -3 Female, -8 Minority (Black Male, Black Female, Hispanic Male, Hispanic Female, Asian Male, AIAN Male, and AIAN Female)
 - Goal set to hire 1 Minority Male or Minority Female in the Medical Laboratory Assistant II classification.
- **Food and Beverage Occupations:** -14 Minority (Black Male, Black Female, Hispanic Male, Hispanic Female, Asian Male, Asian Female, AIAN Male, AIAN Female)
 - Goal set to hire 3 Hispanic Males or Hispanic Females in the Food Regulatory Specialist I classification.

Skilled Crafts:

- **Farming, Fishing, and Forestry Occupations:** -203 Minority (Black Male, Black Female, Hispanic Male, Hispanic Female, AIAN Male)
 - Goal set to hire 1 Hispanic Male and 1 Hispanic Female in the Agricultural Compliance Officer I and II classifications.
- **Installation, Maintenance, and Repair Occupations:** -2 Female, -10 Minority (Black Male, Hispanic Male, Asian Female, and AIAN Male)
 - Goal set to hire 1 Black Male in the Maintenance Construction Tech II classification.
- **Production Occupations:** -17 Female, -41 Minority (Black Male, Black Female, Hispanic Male, Hispanic Female, Asian Male, and Asian Female)
 - Goal set to hire 3 White Males, 3 Black Males, and 1 Hispanic Female in the Meat & Poultry Inspector, LP Site Inspector and Fuel Dispenser Inspector in the Meat & Poultry and Standards Divisions.

To correct underutilization in these categories, NCDA&CS will take the following actions:

- Participate in career fairs at Community Colleges and Universities such as NCSU, NC A&T and other organizations for recruitment of minorities and underrepresented classes as identified during the year.
- Participate in seminars for recruitment opportunities for HBCU.
- Review hiring packages to determine reasons for non-selection of qualified applicants from underutilized groups in areas where program objectives have been set or underrepresentation exists.
- Provide education and information to hiring managers and supervisors regarding administering the EEO plan in the selection process.
- Continue development of and administer training for Human Resource staff, hiring managers and supervisors on applying Veterans' Preference and Promotional Priority, as well as give consideration to protected classes and underutilized groups in all hiring processes.
- Include photos of employees of different nationalities and groups without overrepresenting the extent of the employment numbers of these groups in public and internal communications.
- NCFS continues to review career brochures and website to identify areas for improvement for reaching underserved audiences that may not know of the employment opportunities in NCFS. We encourage other divisions to do the same with any publications and other communication efforts.
- Some divisions do not receive a sufficient number of applications from under representative populations for vacant positions. There are several reasons, for example, some underrepresented groups may not pursue careers in certain specialty fields. But it appears that more often now, competing salaries from other employers, including other agencies within state and federal government, offer higher starting salaries than NCDA&CS offers.
- Maintaining current levels of workforce diversity is another area of focus. More people have been seeking other employment, usually for higher salaries, thus creating an issue for retention of employees. In some cases, vacancies were filled by under representative populations. We will continue to seek qualified people from underutilized groups to fill vacancies.
- NCFS will utilize the Forest Service Internship program and temporary employment options to introduce potential applicants to the NCFS and career opportunities while giving them experience.
- NCFS continues to develop partnerships with the NC Hispanic Chamber of Commerce, the NC Society of Hispanic Professionals, Asianfocus, NC and the NC Department of Military & Veterans Affairs to develop interest in the NCFS and careers in Forestry.

SECTION IV. Documents / Attachments

- 1. Equal Employment Opportunity Policy**
- 2. NCDA&CS Organizational Chart**
- 3. NCDA&CS Merit Based Recruitment Plan**
- 4. NCDA&CS Mandatory and Recommended Training**
- 5. Disciplinary Action Policy**
- 6. Employee Grievance Policy**
- 7. Reasonable Accommodation Policy**
- 8. Unlawful Workplace Harassment Policy**
- 9. Reduction-In-Force Policy**
- 10. B0029: EEO Planning by Org Structure (Electronic)**
- 11. B0031: Staffing by Occupational Category**
- 12. B0170: Labor Force Standard – Employee Distribution – by SOC Subcategory (12-2023)**
- 13. Job Opening Estimate Forms**
- 14. EEO Quantitative Analysis Form**
- 15. B0170: Labor Force Standard – Employee Distribution – by SOC Category 12-2023**
- 16. B0170: Labor Force Standard – Employee Distribution – by SOC Category 12-2022**
- 17. B0038: Employee Headcount by Org Structure 12-2023**
- 18. B0038: Employee Headcount by Org Structure 12-2022**

Addendum and Reference Links to View Policy Attachments 1 – 9 Electronically

Attachment 1: EEO Policy dated April 2019 [NC OSHR: Equal Employment Opportunity Policy](#)

Attachment 2: NCDA&CS Organization Chart dated September 27, 2023 (internal document)

[N.C. Department of Agriculture & Consumer Services Employee Intranet – Department Organization.pdf – Front \(sharepoint.com\)](#)

Attachment 3: NCDA&CS Merit Based Recruitment Plan dated May 18, 2022 (internal document)

[Human Resources – Merit Based Recruitment and Selection Plan.pdf – All Documents \(sharepoint.com\)](#)

Attachment 4: NCDS&CS Mandatory and Recommended Training dated February 2024 (internal document)

[Human Resources - NCDACS Mandatory and Recommended Training February 2024.pdf - All Documents \(sharepoint.com\)](#)

Attachment 5: Disciplinary Action Policy dated September 15, 2023 [open \(nc.gov\)](#)

Attachment 6: Employee Grievance Policy dated April 1, 2023 [Grievance Policy](#)

Attachment 7: Reasonable Accommodation Policy dated June 3, 2021 [Reasonable Accommodation Policy \(nc.gov\)](#)

Attachment 8: Unlawful Workplace Harassment Policy dated April 2019 [open \(nc.gov\)](#)

Attachment 9: Reduction-in-Force Policy dated October 7, 2021 [Contents: \(nc.gov\)](#)

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Equal Employment Opportunity

Contents:

[Policy](#)

[Coverage](#)

[Veterans](#)

[Office of State Human Resources Responsibilities](#)

[Agency, Department and University Responsibilities](#)

[Complaint Process](#)

Policy

The State of North Carolina provides equal employment opportunities to all employees and applicants for employment and prohibits discrimination, harassment or retaliation based on race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information, or disability. The State also recognizes that an effective and efficient government requires the talents, skills and abilities of all qualified and available individuals, and seeks opportunities to promote diversity and inclusion at all occupational levels of State government's workforce through equal employment opportunity (EEO) workforce planning initiatives.

The State is committed to ensuring the administration and implementation of all human resources policies, practices and programs are fair and equitable. State agencies, departments and universities shall be accountable for administering all aspects of employment, including hiring, dismissal, compensation, job assignment, classification, promotion, reduction-in-force, training, benefits and any other terms and conditions of employment in accordance with federal and State EEO laws and policies.

Employees shall not engage in harassing conduct, and if harassing conduct does occur, it should be reported. Managers and supervisors maintain a critical role and responsibility in preventing and eliminating harassing conduct in our workplace. See the Unlawful Workplace Harassment policy of the State Human Resources Manual for provisions related to unlawful harassment, including sexual harassment.

Acts of retaliation against an employee who engages in protected activity or the exercise of any appeal or grievance right provided by law will not be tolerated in our workplace.

EQUAL EMPLOYMENT OPPORTUNITY POLICY (cont.)

Coverage

Individuals protected by provisions of this policy are:

1. current employees;
 2. former employees; and
 3. job applicants.
-

Veterans

Job discrimination of veterans shall be prohibited, and affirmative action shall be undertaken to employ and advance in employment eligible veterans in accordance with Article 13 of G.S. 126 and G.S. 128-15.

See the Veteran's Preference policy in the State Human Resources Manual for provisions related to veteran's preference including the employment and advancement of protected veterans.

Office of State Human Resources Responsibilities

The Office of State Human Resources (OSHR) shall:

1. establish the EEO Plan Requirements and Program Guidelines in accordance with federal and state laws to be followed by all agencies, departments and universities, to ensure commitment to and accountability for equal employment opportunity throughout State government;
 2. review, approve and monitor all EEO plans and updates;
 3. provide services of EEO technical assistance, training, oversight, monitoring, evaluation, support programs, and reporting to ensure that State government's work force is diverse at all occupational levels;
 4. develop and promote EEO programs and best practices to encourage consistent and fair treatment of all State employees; and
 5. meet with agency heads, department heads, and university chancellors, Human Resources Directors and EEO Directors/Officers annually to discuss the progress made toward reaching program goals.
-

EQUAL EMPLOYMENT OPPORTUNITY POLICY (cont.)

Agency, Department and University Responsibilities

Each Agency Head, Department Head and University Chancellor shall:

1. adhere to the policies and programs that have been adopted by the State Human Resources Commission and approved by the Governor;
 2. ensure the agency, department or university's commitment to EEO is clearly communicated to all employees;
 3. ensure that Human Resources policies and employment practices are implemented consistently and fairly;
 4. designate an EEO Officer/Director who has access to the agency head, department head or university chancellor to be responsible for the operation and implementation of the EEO Plan;
 5. provide the necessary resources to ensure the successful implementation of the EEO Program;
 6. ensure each manager and supervisor has, as a part of his or her performance plan, the responsibility to comply with EEO laws and policies, and assist in achieving EEO goals established by the agency, department or university;
 7. ensure the EEO Plan is designed in accordance with the EEO Plan Requirements and Program Guidelines as specified by the Office of State Human Resources;
 8. ensure the EEO Plan is submitted by March 1st of each year to the Office of State Human Resources for review and approval as required by G.S. 126-19;
 9. ensure all employees are made aware of the EEO policy including the Unlawful Workplace Harassment Policy found in the State Human Resources Manual;
 10. develop strategies to prevent unlawful workplace harassment and retaliation in the workplace;
 11. ensure required employee notices describing Federal laws prohibiting job discrimination are posted in work locations where notices to applicants and employees are customarily posted and easily accessible to applicants and employees with disabilities;
 12. maintain records of all complaints and grievances alleging discriminatory practices;
- and

Effective Date: April 2019

EQUAL EMPLOYMENT OPPORTUNITY POLICY (cont.)

13. ensure all newly hired, promoted, or appointed supervisors and managers complete required EEO training in accordance with G.S. 126-16.1. See the Equal Employment Opportunity Diversity Fundamentals policy located in the State Human Resources Manual for information related to EEO training.
-

Complaint Process

An individual covered by this policy who is alleging unlawful discrimination, harassment or retaliation may file a complaint following the process outlined in the Employee Grievance Policy located in the State Human Resources Manual. For the purpose of this policy, political affiliation is not a protected classification under federal EEO law but may be grieved pursuant to G.S. 126-34.02 as a contested case after completion of the agency grievance procedure and the Office of State Human Resources review.

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

North Carolina Board of Agriculture

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Sean Brogan**

**Region 3 Mountain
Greg Smith**

**Structural Pest Control
and Pesticides
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**Public Safety
Anthony Prignano**

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**Forest Protection
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**Veterinary
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**Soil & Water Conservation
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**Safety, Planning & Analysis
Craig Clarke**

**Aviation
Robert Delleo**

**ASC Complex Manager
Brenda Jackson**

**Agricultural Research
Specialist
Weston McCorkle**



DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

NUMBER: HR #018
SUBJECT: Merit Based Recruitment and Selection Plan

TOTAL PAGES: 8

REVISED EFFECTIVE DATE: 8/1/2014 & 5/18/22

APPROVED BY: Steven W. Troxler 5/18/2022
Steven W. Troxler, Commissioner Date Signed

RELATED LEGISLATION:

- A. NC General Statute 126
- B. State Human Resources Manual, Equal Opportunity
- C. State Human Resources Manual, Workforce Planning, Recruitment & Selection

I. PURPOSE

The purpose of this Merit-based Recruitment and Selection Plan is to fill positions subject to the State Human Resources Act from among the most qualified individuals.

In the recruiting and selection process, the Department of Agriculture and Consumer Services will give equal employment opportunity to all applicants, without regard to race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information, or disability; and decisions will be based solely on job related criteria. The recruitment and selection process will be consistently applied, nondiscriminatory and promote fairness, diversity and integrity. The recruitment and selection process will comply with all Federal and State laws, regulations and policies.

II. COMMITMENT FROM MANAGEMENT

The Commissioner, Human Resources Management Director and Executive Management accept responsibility for ensuring that all hiring practices are applied consistently and equitably, thereby demonstrating commitment and support of the Merit-based Recruitment and Selection Plan.

The Commissioner, Human Resources Management Director and Executive Management accept responsibility for ensuring the recruitment and selection process complies with all

applicable and existing state and federal laws, policies, and rules governing human resources actions. The Merit-based Recruitment and Selection Plan will also comply with established policies issued by the Office of State Human Resources. It is the commitment of the department to recruit qualified applicants and to promote the recruitment of minorities, women, individuals with disabilities, and others who may be under-represented demographically through the use of sound Human Resources practices and principles.

III. ETHICS STATEMENT

The citizens of North Carolina and the state workforce deserve strong assurances that knowledge, skills, and abilities (KSAs) and/or competencies are the basis for state government hiring decisions, not political patronage. In order to assure the integrity of state government, every employee has a responsibility to view public service as a public trust and to act impartially. Preferential treatment will not be given to any private organization or individual based on political affiliation or influence.

IV. COMMUNICATION

The Department of Agriculture and Consumer Services will implement strategies to inform employees, applicants and the general public of the Merit-based Recruitment and Selection Plan.

After receiving approval from the State Human Resources Commission, employees will be informed of any subsequent revisions of the Merit-based Recruitment and Selection Plan and processes. The Merit-based Recruitment and Selection Plan will be posted on the agency Intranet. Employees with questions may contact the Human Resources Management Office at (919) 707-3200.

The Department of Agriculture and Consumer Services will post a summary of the Merit-based Recruitment and Selection Plan in the Human Resources Management Office, provide a copy of the plan and procedures to each Division Director, and include a statement about this plan on the vacancy announcement.

V. TRAINING

The Department of Agriculture and Consumer Services will provide merit-based recruitment and selection training to managers/supervisors and Human Resources Management Office staff. Updates and revisions to the Department of Agriculture and Consumer Services Merit-based Recruitment and Selection Plan will be communicated through written materials and training sessions.

VI. ROLES/DEFINITIONS/EXPECTATIONS

Executive Management staff is responsible for leadership in developing and implementing merit-based procedures and demonstrating commitment and support for merit-based recruitment and selection.

Managers and supervisors are responsible for evaluating the need for filling vacant positions; maintaining accurate and current position descriptions for subordinate jobs; understanding the concepts of the merit-based system and communicating the process to employees and applicants; making every effort to achieve and maintain a diverse workforce; demonstrating commitment and support for merit-based recruitment and selection; making all hiring decisions based on merit principles; and documenting selection decisions.

Human Resources Management Office and Equal Employment Opportunity (EEO) staff are responsible for demonstrating commitment and support for merit-based recruitment and selection in daily operations; providing technical advice and assistance to managers and supervisors; developing agency specific policies and procedures for merit-based actions; ensuring the training of managers and supervisors on a variety of issues relating to merit-based recruitment and selection; monitoring recruitment and selection activities for adherence to merit-based policies and procedures; and maintaining recruitment and selection data in order to conduct employment trend analysis. Individuals with responsibilities which include human resources functions may also provide assistance and guidance to managers and supervisors. For the purposes of this plan, such individuals will be considered a part of the Human Resources Management Office staff.

Employees and applicants are responsible for obtaining vacancy information in order to submit the required materials; providing full and complete information as to their qualifications; and submitting materials for the vacancy by the established deadline.

VII. PRE-RECRUITMENT/RECRUITMENT ACTIVITIES

The Department of Agriculture and Consumer Services will strive to actively recruit from a variety of sources to achieve a diverse workforce that successfully meets the needs and demands of the agency.

A. Pre-Recruitment

1. The hiring manager, with assistance and guidance from the Human Resources Management Office staff, will:
 - assess the need for the position to ensure it contributes to meeting the goals, objectives, and mission of the work unit;
 - Review the duties, responsibilities, knowledge, skills, abilities, education and experience of the position to determine if they correspond with the current use of the position.
 - Revise the position description, work plan, and recruitment standards when necessary and notify HR of such revisions to determine if job evaluation is in order.
2. A job evaluation is necessary only when significant changes in the duties and responsibilities of the position are noted; and thereby change the recruitment standards for the vacancy. This differs from job analysis which is the review and validation of the most recent position description. Therefore, if the position

description on file reflects the recruiting standards for the vacancy, there is no need to conduct a job evaluation as long as the most recent job information on file accurately reflects the current KSAs/ competencies, education, experience, duties and preferences of the class vacancy. With consultation from the HR office, the hiring manager should ensure that relevant critical tasks, essential functions, KSAs/ competencies and training and experience requirements necessary for the vacancy, which may be in addition to the class specification's minimum recruitment standards, are identified. The additional minimum selective criteria identified by the hiring supervisor shall be posted in the vacancy announcement.

3. If a job analysis indicates that current recruitment standards do not appropriately reflect the position to be recruited for, management, in consultation with HR, should determine if the job is appropriately classified or requires an update of the position description and recruitment standards. Any significant discrepancies in the intended recruitment standards and the current job duties must be reconciled through HR before recruitment begins.

B. Recruitment

1. Relevant recruitment standards that correspond to the current duties and responsibilities of the position will guide the information that management incorporates into the vacancy announcement. HR will ensure the vacancy announcement meets the requirements of the department's plan and the State Human Resources policies.
2. The Division Director and Human Resources Management Office staff will determine the appropriate option in posting a vacancy (internal to the agency, state government, or external). In addition, the Human Resources Management Office staff will consult with the Division Director to determine additional recruitment sources, if needed, to target specific audiences, including professional journals, newspapers, technical colleges/universities and the internet.
3. The hiring manager will determine any selection tool(s) that will be used in the final evaluation process prior to the closing date for the position. Any selection tool(s) utilized will be objective, based upon job-related KSAs and/or competencies, and be consistently applied to all applicants in the final selection pool. The Human Resources Management Office staff is available for assistance and review of selection tools and procedures. Some examples of selection tools include structured interview, written tests, skills tests, and reference checks.

VIII. SELECTION PROCESS

A. Definitions

1. Selective Criteria: Additional essential qualifications specifically related to the duties and responsibilities of the individual position
2. Knowledge, skills, and abilities (KSAs)
 - a. Knowledge: Information which makes adequate performance on the job possible
 - b. Skill: A proficiency that is readily observable, quantifiable, and measurable (examples include skill in data-based management; skill in operating a vehicle)
 - c. Ability: Capacity to perform an activity at the present time
3. Competencies: Knowledge, skills, and abilities that contribute to the success in the job and to the organization's mission and goals. Competencies must be 1) demonstrated on the job, 2) measured according to standards set by the organization, and 3) required of the job based upon the organization's needs.
4. Essential qualifications (minimum qualifications): Minimum education and experience requirements including knowledge, skills, abilities and/or competencies and other selective criteria included on the vacancy announcement such as required license or certification.
5. Preferences (criteria that may be used when determining who to interview): Specific types of experiences, degrees, licenses, KSAs, and/or competencies or other selection factors above those minimally required to perform the duties and responsibilities of a position.
6. Qualified: Those applicants whose credentials indicate the possession of education and experience, selective criteria, and KSAs and/or competencies included in the vacancy announcement.
7. Most qualified: Applicants who, to the greatest extent, possess qualifications which exceed the essential requirements (minimum education and experience, selective criteria, and KSAs and/or competencies) described in the vacancy announcement

B. Determining qualified and most qualified applicants

1. Determining qualified applicants (applicants who meet the minimum education, experience and KSAs/ competencies of the posting requirements): Applications are submitted to the Human Resources Office, where a designated staff member screens all applications to determine those that meet minimum/essential qualifications, including any selective criteria. Management may provide technical consultation to HR on the posted criteria.

If the quality of applications is deemed insufficient, the hiring manager may choose to re-advertise the position.

2. Determining the most qualified applicants – (applicants whose education, experience and KSAs/ competencies clearly exceed the posting requirements): The hiring manager will determine who will screen for most qualified. The hiring manager may choose any of the following to screen for most qualified: Human Resources Staff, a designated subject matter expert, the hiring manager or a panel made up of any combination of the aforementioned staff .

Applications referred to the hiring manager must be reviewed in relation to all applicable state and federal employment laws and policies.

Reasons for each applicant’s non-selection must be recorded in the e-recruit (applicant tracking) system. The final selection recommendation will be made from among the most qualified applicants. Applicants with priority consideration shall also be given appropriate consideration. The hiring manager shall use selection tools that are objective and based upon job-related KSAs/competencies. Any selection tool used will be consistently applied to all applicants in the final pool. The hiring manager will also be responsible for documenting the selection process (i.e., additional selective criteria, KSAs/ competencies and preferences) and justifying the hiring recommendation and/or decision. Written notice shall be provided to each unsuccessful applicant who was in the group of most qualified applicants. HR staff will be available for guidance and assistance to the hiring manager at any time during the selection process.

IX. EMPLOYMENT REEMPLOYMENT PRIORITIES

The Human Resources Management Office staff will review the initial applicant pool to identify applicants with priority status. All employment/reemployment priorities are to be afforded in accordance with State policy. This will require, in some instances, that applications of individuals with certain priorities will be included among those referred to the hiring manager. All individuals involved in application evaluation, including the hiring manager, will receive advice and guidance from the Human Resources Management Office staff regarding the priority consideration which must be afforded.

Consideration must be given to applicants that have the following priorities:

Consideration	Definition
Priority Reemployment	For complete details on the priority to be afforded to individuals who have been notified of pending separation due to reduction in force, refer to the State Human Resources Manual, Reduction in Force Priority Policy.
Exempt Policy-Making and Exempt Managerial	For complete details on the priority to be afforded to individuals separated from exempt policy-making and exempt managerial positions for reasons other than just cause, refer to the State Human Resources Manual, Priority Reemployment for Policy-Making and Exempt Managerial Employees Policy.

Veterans & National Guard Preference	For complete details on preferences to be afforded to individuals eligible for veterans and national guard preference, refer to the State Human Resources Manual, Veterans & National Guard Preference Policy.
Promotional Priority	Career state employees are eligible for priority consideration over non-state applicants when the individuals possess substantially equal qualifications. Refer to the State Human Resources Manual, Promotional Priority Policy for additional details.

X. MAKING THE FINAL SELECTION RECOMMENDATION DECISIONS

The final selection recommendation will be made from among the most qualified applicants. Applicants with priority reemployment must also be given appropriate consideration. The hiring manager will utilize selection tools that are objective and based upon job-related KSAs and/or competencies. Any selection tool will be consistently applied to all applicants in the final pool. The hiring manager will also be responsible for documenting the selection process and justifying the hiring recommendation. The Human Resources Management staff will be available for guidance and assistance to the hiring manager during the selection process. The Human Resources Management Office staff will review the applicant package to ensure employment/reemployment priorities are properly afforded. Applicants not selected for the position will receive timely written notice from the Human Resources Management Office of the selection decision.

XI. APPROVAL PROCESS

All employment recommendations must be forwarded by the Division Director to the appropriate Assistant Commissioner for review and approval. After review and approval by the Deputy Commissioner, the Selection/Rejection form is submitted to the Human Resources Management office. The Human Resources Management staff member will communicate the final approval to the Division Director or his/her designee. Offers of employment may be made only after the final approval is communicated to the Division Director by the Human Resources Management Office.

XII. DOCUMENTATION OF PROCESS

It will be the practice of the Department of Agriculture and Consumer Services to maintain documentation of the merit-based recruitment and selection process in order to support the decisions and to provide fact-based information for monitoring and evaluating recruitment and selection practices and procedures.

A file will be maintained for each hiring event for a minimum of three years. Each file will contain:

- Any record of job analysis conducted for the vacancy including any additional KSAs and/or competencies or other selective criteria that resulted from job analysis (or a reference to the job analysis utilized for the vacancy)
- Employment request form
- Vacancy announcement
- Recruitment sources
- Selection tools and criteria
- Applications received
- Applicant referral form
- Selection/rejection form
- Inventory of applicants as unqualified, qualified, and most qualified
- Letters to unsuccessful applicants notifying them the position has been filled

XIII. APPEALS PROCESS

If an applicant wishes to appeal non-selection the following conditions must apply:

- Applicant timely applied for the position in question;
- Applicant was not hired into the position;
- Applicant was among the most qualified persons applying for the position;
- Successful applicant for the position was not among the most qualified persons applying for the position.

Refer to the State Human Resources Manual, Grievance Policy for additional details on the appeals criteria and process.

XIV. MONITORING/EVALUATION

The Human Resources Management staff will periodically review program data across the agency to ensure the recruitment and selection activities are in compliance with the agency plan. The Human Resources Management staff will also comply with the reporting and plan update requirements from the Office of State Human Resources.

REVISION HISTORY

- On May 18, 2022, this policy was changed to include the National Guard as a preference.
- On August 14, 2014, this policy was changed from a Policy to a Plan as required by the revisions to Section 2 of the State Human Resources Manual, Recruitment and Posting of Vacancies.



Mandatory* & Highly Recommended Training



Last revised: February 2024

All Employees: Mandatory				
Topic	Title(s)	Format	Provided by	Description
Agency Onboarding & Orientation	AGR New Employee Orientation Curriculum	LMS	NCDA&CS	Assigned to new and transfer employees. Consists of training, forms, and policies assigned to new employees. Complements New Employee Orientation vILT sessions.
	AGR New Employee Orientation	vILT	NCDA&CS	New and transfer employees invited according to hire date. Live virtual instructor led session with agency leadership and Human Resources management/staff.
Attendance	AGR Attendance Policy Overview	LMS	NCDA&CS	Explains agency policy. Included in New Employee Orientation vILT.
	AGR Attendance Policy & Acknowledgement	LMS	NCDA&CS	Agency policy on attendance and leave. Electronic signature required. Included in AGR New Employee Orientation Curriculum; annual policy review/acknowledgement in September.
Disciplinary Action	AGR Disciplinary Action Policy Overview	LMS	NCDA&CS	Explains state policy. Included in Included in New Employee Orientation vILT.
	AGR Disciplinary Action Policy & Acknowledgement	LMS	NCDA&CS	State policy on disciplinary action. Electronic signature required. Included in AGR New Employee Orientation Curriculum.
Drug-Free Workplace, Controlled Substance & Alcohol Testing	AGR Drug Free Workplace, Controlled Substance, and Alcohol Testing Policy Overview	LMS	NCDA&CS	Explains agency policy. Included in New Employee Orientation vILT.
	AGR Drug Free Workplace, Controlled Substance, and Alcohol Testing Policy & Acknowledgement	LMS	NCDA&CS	Agency policy on controlled substance and alcohol testing. Electronic signature required. Included in AGR New Employee Orientation Curriculum; annual policy review/acknowledgement in September.

*Additional courses deemed mandatory by Division management may be assigned. **For a list of required courses for temporary employees, visit [the HR Learning & Performance intranet page.](#)**

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Mandatory* & Highly Recommended Training



All Employees: Mandatory, Cont'd.				
Topic	Title	Format	Provided by	Description
Fraud, Waste, and Abuse	AGR AS Fraud, Waste, and Abuse Policy & Acknowledgement	LMS	NCDA&CS	Explains Department policy on fraud, waste, and abuse. Included in AGR New Employee Orientation Curriculum.
Grievance	AGR Employee Grievance Policy Overview	LMS	NCDA&CS	Explains state policy. Included in New Employee Orientation vILT.
	AGR Employee Grievance Policy & Acknowledgement	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum.
Information Technology Acceptable Use; Email Usage	AGR Information Technology Acceptable Use Policy & Acknowledgment	LMS	NCDA&CS	Agency policy on acceptable use of computer equipment. Electronic signature required. Included in AGR New Employee Orientation Curriculum.
	AGR Information Technology Email Usage Policy & Acknowledgement	LMS	NCDA&CS	Agency policy on email use. Electronic signature required. Included in AGR New Employee Orientation Curriculum.
Learning & Performance, LMS NCVIP	AGR Learning and Performance Technology Overview	LMS	NCDA&CS	Introduces statewide Learning & Performance technology system. Included in AGR New Employee Orientation Curriculum.
	AGR Performance Planning Process for New Employees	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum.
	AGR Performance Management Policy & Acknowledgement	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum.
	AGR Performance Plan Information	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum.
Motor Vehicle Usage & Telematics	AGR Motor Vehicle Policy & Telematics Installation Overview	LMS	NCDA&CS	Explains agency policy. Included in New Employee Orientation vILT.
	AGR Motor Vehicle Use Policy & Acknowledgement, AGR Acknowledgement Telematics Installation	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum; annual policy review/acknowledgement in May.
Public Records and Retention Practices	AGR Cultivate the Leader in You: Public Records and Retention General Overview	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum; one-time assignment issued to all current employees and temps July 2021.

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Mandatory* & Highly Recommended Training



All Employees: Mandatory, Cont'd.				
Topic	Title	Format	Provided by	Description
Unlawful Workplace Harassment	AGR Unlawful Workplace Harassment Policy Overview	LMS	NCDA&CS	Explains state policy and agency procedures. Included in New Employee Orientation vILT.
	AGR Unlawful Workplace Harassment Policy & Acknowledgement	LMS	NCDA&CS	State policy on unlawful workplace harassment. Electronic signature required. Included in AGR New Employee Orientation Curriculum.
	Title varies	LMS	NCDA&CS	Related topic(s) assigned as annual refresher
Workplace Violence	AGR Cultivate an Awareness of Workplace Violence for New Employees	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum.
	AGR Workplace Violence Policy Overview	LMS	NCDA&CS	Explains state policy and agency procedures. Included in New Employee Orientation vILT.
	AGR Workplace Violence Policy & Acknowledgement; Workplace Violence Procedure Plan; Workplace Violence Prevention Training (annual topics TBA)	LMS	NCDA&CS	Included in AGR Cultivate an Awareness of Workplace Violence for New Employees; agency assigns policy, plan, and training as annual refresher
Payroll, Benefits, Time, and Leave technology (Integrated HR-Payroll System)	FIORI 2.0 modules titled My Timesheet, My Paystubs, and My Benefits	LMS	Office of State Controller	Managers responsible for assigning this training to their employees. NCDA&CS HR does not have assignment access.
Cyber Security	Titles selected by NC Department of Information Technology (NC DIT)	LMS	NC DIT, OSHR	Assigned every other month by NC DIT/OSHR.

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Mandatory* & Highly Recommended Training



All Employees: Mandatory, Cont'd.				
Topic	Title	Format	Provided by	Description
Safety	AGR Emergency Action Plan	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum.
	AGR Fire Extinguishers	LMS	NCDA&CS	Included in AGR New Employee Orientation Curriculum.
	Run-Hide-Fight: Protective Actions for a Shooter in the Workplace	LMS	Dept. of Public Safety	Included in AGR New Employee Orientation Curriculum.
	AGR State Employee Safety and Health Handbook	LMS	OSHR	Assigned to all current employees 2/10/2021. Included in AGR New Employee Orientation Curriculum.
	Teleworking Program Training for Employees	LMS	OSHR	Contact Shawn Garland request training assignment.. Visit the Teleworking Program intranet page for more information.
Teleworking (eligible employees only)	Teleworking Program Training for Employees	LMS	OSHR	Contact Shawn Garland request training assignment.. Visit the Teleworking Program intranet page for more information.

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Mandatory* & Highly Recommended Training



Managers**: Mandatory				
Topic	Title	Format	Provided by	Description
Disciplinary Action	AGR Disciplinary Action in the Workplace: Practical Strategies for Managers and Supervisors	Blended: LMS and vILT	NCDA&CS	Under revision. Performance management, coaching, counseling, and progressive discipline.
Equal Employment Opportunity	Equal Employment Opportunity and Diversity Fundamentals (EEOF)	Blended: LMS and vILT	NCDA&CS, OSHR	Automatically assigned by OSHR to applicable employees.
Leave Management (Integrated HR Payroll System)	Manager Self Service (MSS) MS200	LMS	Office of State Controller	Time and leave approval for direct reports. NCDA&CS HR does not have assignment access. Must be assigned by manager or self-requested.
Performance Management	AGR Cultivate the Leader In You: Performance Management	vILT	NCDA&CS	Performance management policy, manager responsibilities, practical tools; NCVIP technology components. These courses are considered mandatory training for all new managers. Seasoned managers also encouraged to complete these courses.
	AGR Cultivate the Leader In You: Performance Plan NCVIP Technology	LMS		
	AGR Cultivate the Leader In You: Interim Review NCVIP Technology	LMS		
	AGR Cultivate the Leader In You: Annual Performance Evaluation NCVIP Technology	LMS		
Position Descriptions	AGR Cultivate the Leader in You: Writing and Revising Position Descriptions	LMS	NCDA&CS	Self-paced online course. Prerequisite for virtual instructor-led training. Open to all supervisors, managers, Division HR reps, and other interested parties. Contact Shawn Garland for details.
	AGR Cultivate the Leader In You: Advanced Position Description Training	vILT	NCDA&CS	Division Directors and HR instructors determine schedule. Contact Shawn Garland for details.
Recruitment & Selection	AGR Cultivate the Leader In You: Recruitment and Selection	LMS	NCDA&CS	Also required for Division HR Reps and NCFS Clerks. New or newly promoted managers assigned after hire. New HR Reps and Clerks, contact Shawn Garland for assignment.
Teleworking (mandatory for managers who supervise teleworkers)	Teleworking Program Training for Employees	LMS	OSHR	Contact Shawn Garland request training assignment. Visit the Teleworking Program intranet page for more information.
Workers' Compensation	Workers' Compensation Basics for Supervisors	LMS	OSHR	Assigned to all managers and division representatives for workers compensation. New division representatives, please contact Shawn Garland for assignment.
Please note: Additional training may be required according to your role and assigned by your manager.				

**The term "managers" includes anyone responsible for supervising / leading others.

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Mandatory* & Highly Recommended Training



All Employees: Highly Recommended

The following ongoing learning opportunities are open to all employees; however, your manager may be required to approve your attendance.

Topic	Title	Format	Provided by	Assigned/Schedule
Customer Service	AGR Cultivate Quality Customer Service	LMS	NCDA&CS	Available for all employees. Search LMS for <i>AGR Cultivate Quality Customer Service</i> . Covers non-discrimination, service delivery expectations, and handling difficult customer situations.
Essential Skills (also known as “soft skills”)	Leading At Levels - Individual Contributor (LAAL-IC) and/or Supervisor (LAAL-S) Series	ILT, vILT	NCDA&CS, OSHR	Courses are offered statewide by NCDA&CS and OSHR facilitators. Those not in formal supervisory positions can enroll in Supervisor courses, just as supervisors / managers can enroll in Individual Contributor sessions. Contact Shawn Garland for details.
Performance Management	AGR Cultivate the Leader In You: Performance Plan NCVIP Technology Interim Review NCVIP Technology Annual Performance Evaluation NCVIP Technology	LMS	NCDA&CS	Self-paced LMS modules covering technology steps specific to NCVIP tasks.
State Government	NC101: A Tour of State Government	LMS	OSHR	Explains the structure of North Carolina State Government. Open to all state employees; especially helpful for those new to NC State Government. Search LMS for NC101 for details.
Train-the-Trainer	Qualified Training Professional (QTP)	Blended: LMS and ILT	OSHR	Audience: those in training roles who have not had formal training or those new to roles with training duties. For more information on QTP, visit the Leadership Training page in the NC Learning Center (LMS) .

Employees not in formal leadership roles may benefit from courses in the manager curriculum (below). Contact [HR Learning & Performance](#) for more information.

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Mandatory* & Highly Recommended Training



Managers: Highly Recommended				
Topic(s)	Title	Format	Provided by	Assigned/Schedule
Americans with Disabilities Act (ADA)	ADA Online Training	LMS	NCDA&CS	Assigned upon request. Purpose and provisions of ADA laws and related legislation, state policy, agency-procedures, and state legislation; manager responsibilities.
Classification & Compensation	TBA	TBA	NCDA&CS	Under development. Some classification content provided in <i>Position Descriptions</i> .
Customer Service	AGR Cultivate Quality Customer Service	LMS	NCDA&CS	Available for all employees. Search LMS for <i>AGR Cultivate Quality Customer Service</i> . Covers non-discrimination, service delivery expectations, and handling difficult customer situations.
Equal Employment Opportunity and Affirmative Action, Legally Defensible Hiring, ADA, Harassment Prevention	Equal Employment Opportunity and Diversity Fundamentals Refresher (EEO/DF Refresher)	LMS	OSHR	Recommended for managers who completed EEO/DF or equivalent course 5+ years ago. Contact Shawn Garland for assignment.
Grievances	Grievance Overview (OSHR)	LMS	OSHR NCDA&CS	OSHR module assigned upon request. Grievance content included in <i>Disciplinary Action</i> training. Additional NCDA&CS training under development.
Investigation Training	TBA	TBA	NCDA&CS	Under development. Investigations content included in <i>Disciplinary Action</i> .
Leave of Absence	TBA	TBA	NCDA&CS	Under development. Leave options; manager roles and responsibilities.
Position Descriptions	AGR Cultivate the Leader In You: Writing and Revising Position Descriptions	LMS	NCDA&CS	Required for and assigned to those responsible for writing job descriptions; open to all managers. Division Human Resources Representatives also required to complete this training. Contact Shawn Garland with questions about this requirement.
	AGR Cultivate the Leader In You: Advanced Position Description Training	ILT or vILT	NCDA&CS	Required for and assigned to those responsible for writing job descriptions. Scheduled by Division. Contact Shawn Garland for details.

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Mandatory* & Highly Recommended Training



Managers: Highly Recommended, Cont'd.				
Topic(s)	Title	Format	Provided by	Assigned/Schedule
State Government	NC101: A Tour of State Government	LMS	OSHR	Explains the structure of North Carolina State Government. Open to all state employees; especially helpful for those new to NC State Government. Search LMS for NC101 for details.
Supervisory/Management Skills	Leading At Levels Supervisory Skills Series (LAAL-S) and Management Skills (LAAL-M)	ILT	NCDA&CS, OSHR	Courses are offered statewide by NCDA&CS and OSHR facilitators. Those not in formal supervisory positions can enroll in Supervisor courses, just as supervisors / managers can enroll in Individual Contributor sessions. Contact Shawn Garland for details.
	Advanced Skills for Managers (ASM)	ILT	OSHR	Target audience: Middle managers (those who supervise supervisors; those who have program management responsibilities but may not supervise supervisors; or supervisors of professional staff) AND have completed basic leadership skills training. LAAL-S and LAAL-M are appropriate prerequisites. Contact Shawn Garland for details.
	NC Certified Public Manager® Program	ILT	OSHR	In-depth, comprehensive, competency-based, nationally certified development program for public sector middle managers in the state of North Carolina. Contact Shawn Garland for details.
Unlawful Workplace Harassment	Recognizing, Preventing and Correcting Unlawful Workplace Harassment for Managers	ILT or vILT	NCDA&CS	Scheduled upon request. Manager responsibilities in preventing, recognizing, and correcting unlawful workplace harassment; review of state policy and agency procedures. Contact HR Employee Relations/EEO AGR.ER.EEO@ncagr.gov to schedule.
Workplace Violence	Workplace Violence Awareness for Managers	ILT or vILT	NCDA&CS	Scheduled upon request. Manager responsibilities in preventing and reporting workplace violence; review of state policy and agency procedures. Contact HR Employee Relations/EEO AGR.ER.EEO@ncagr.gov to schedule.

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Disciplinary Action Policy

Contents:

§ 1.	Policy	2
§ 2.	Covered Employees	2
§ 3.	Employee Assistance Program (EAP)	2
§ 4.	Just Cause for Disciplinary Action	3
§ 4.1.	Introduction	3
§ 4.2.	Unsatisfactory Job Performance	3
§ 4.2(a)	Addressing performance issues before disciplinary action	3
§ 4.2(b)	What is Just Cause for Unsatisfactory Job Performance?	4
§ 4.3.	What is Just Cause for Grossly Inefficient Job Performance?	5
§ 4.4.	What is Just Cause for Unacceptable Personal Conduct?	5
§ 5.	Types of Disciplinary Action	7
§ 5.1.	Written Warning	7
§ 5.1(a)	Unsatisfactory Job Performance	7
§ 5.1(b)	Performance Improvement Plan	8
§ 5.1(c)	Unacceptable Personal Conduct or Grossly Inefficient Job Performance	8
§ 5.1(d)	Written warnings shall:	8
§ 5.2.	Disciplinary Suspension without Pay	8
§ 5.2(a)	Length of Time for Disciplinary Suspension	9
§ 5.3.	Demotion	9
§ 5.4.	Dismissal	10
§ 5.5.	Required Consultation	10
§ 6.	Procedures for Issuing Disciplinary Action Other Than a Written Warning	10
§ 6.1.	Prerequisites for Disciplinary Action	11
§ 6.2.	Active Disciplinary Actions	11
§ 7.	Procedures for Pre- Disciplinary Conference (PDC)	12
§ 7.1.	Prior to the Conference	12
§ 7.1(a)	Virtual Pre-Disciplinary Conference	13
§ 7.1(b)	Legal Representation	13
§ 7.1(c)	Employee Absence	13
§ 7.1(d)	Recordings	13
§ 7.2.	During the Conference	14
§ 7.3.	Following the Conference	14
§ 7.3(a)	Effective Date	15
§ 7.4.	Failure to Follow Procedure	15
§ 7.4(a)	Public Information	15
§ 7.4(b)	Additional Pre-Disciplinary Conference	16
§ 8.	Transfer of Disciplinary Action	17
§ 9.	Investigatory Leave with Pay	17
§ 9.1.	Procedures for Placing an Employee on Investigatory Leave with Pay	17
§ 9.2.	Acceptable Reasons for Initial Placement of an Employee on Investigatory Leave with Pay	18
§ 9.2(a)	Acceptable Reasons for Extending Investigatory Leave with Pay	18
§ 10.	Right of Appeal	18
§ 10.1.	Waiver of Appeal Rights	19
§ 11.	Policy Responsibilities	19
§ 11.1.	Agency	19

Disciplinary Action Policy

§ 11.2. Office of State Human Resources.....	19
§ 11.3. State Human Resources Commission.....	20
§ 12. Credentials.....	20
§ 12.1. Falsification of Credentials.....	20
§ 13. Definitions.....	21
§ 14. Sources of Authority.....	22
§ 15. History of This Policy.....	23

§ 1. Policy

State employees are expected to meet performance standards and conduct themselves appropriately. This policy is intended to provide tools for addressing employee conduct and performance issues in a reasonable, consistent, and effective manner.

The procedures in this policy provide for progressive discipline to address issues involving unsatisfactory job performance for employees to be given notice of deficiencies and an opportunity to improve them. However, this policy also recognizes that some employee conduct occurring either on-duty or off-duty is so egregious and intolerable that continued employment is not a possibility and progressive discipline is not appropriate. Behavior of this type is considered either unacceptable personal conduct, which can be either on-duty or off-duty, or in the case of on-duty behavior, grossly inefficient job performance.

The imposition of any disciplinary action shall comply with the procedural requirements of this policy.

§ 2. Covered Employees

This policy applies to employees who have attained career status as defined by North Carolina General Statute 126-1.1.¹

§ 3. Employee Assistance Program (EAP)

Prior to or in conjunction with disciplinary action, a supervisor may elect to refer an employee to the Employee Assistance Program (EAP) as appropriate. Referral to EAP is not

¹ This does not preclude an agency from issuing a disciplinary action to an employee who is not a career status employee, as defined in N.C.G.S. § 126-1.1, however the issuance of a disciplinary action to an employee without career status does not create any requirement for the agency to utilize progressive discipline nor does it create grievance rights for employees who do not otherwise have these rights.

Disciplinary Action Policy

considered a substitute for any disciplinary action. For more information on the appropriate referral type, please see the *Employee Assistance Program Policy*.

§ 4. Just Cause for Disciplinary Action

§ 4.1. Introduction

There are two bases for the discipline or dismissal of employees under the statutory standard for "just cause" as set out in N.C.G.S. § 126-35. These two bases are:

1. Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
2. Discipline or dismissal imposed on the basis of unacceptable personal conduct².

The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.³

The courts have interpreted Just Cause to mean satisfying the requirements of the administrative code (as discussed in this policy) and in addition meeting an equitable test discussed in case law. Human Resources staff should consult with agency legal counsel about how case law has interpreted just cause with respect to past fact patterns.

§ 4.2. Unsatisfactory Job Performance

Unsatisfactory job performance means work-related performance that fails to satisfactorily meet job requirements as set out in the relevant job description, work plan, or as directed by the management of the work unit or agency.

§ 4.2(a) Addressing performance issues before disciplinary action

The intent of disciplinary action for unsatisfactory job performance is to promote improved employee performance. When coaching and a documented counseling session fail to correct employee performance, the manager/supervisor may address the matter by issuing a formal disciplinary action, the first level of which is a written warning. For more

² 25 NCAC 01J .0604(b)

³ 25 NCAC 01J .0604(c)

Disciplinary Action Policy

information on how to address performance issues prior to proceeding to disciplinary action, please refer to the *Performance Management Policy*.

§ 4.2(b) **What is Just Cause for Unsatisfactory Job Performance?**

Any work-related performance issue may establish just cause to discipline an employee for unsatisfactory job performance. Just cause for a warning or other disciplinary action for unsatisfactory job performance occurs when an employee fails to satisfactorily meet job requirements.

Disciplinary actions administered for unsatisfactory job performance are intended to prompt a permanent improvement in job performance. Should the employee's performance fail to improve in the time prescribed in a disciplinary action, or if the required improvement later deteriorates, or other inadequacies occur, the manager or supervisor may deal with this occurrence of uncorrected or new unsatisfactory job performance with additional progressive disciplinary action(s).⁴

The determination that an employee has engaged in unsatisfactory job performance is generally made by the supervisor in consultation with management. The supervisor's and/or managements' determination should be reasonable, consistent, factually supported and made in conjunction with the Human Resources Office. In determining whether an employee's job performance is unsatisfactory job performance, a manager/supervisor may consider any one or a combination of the factors set forth below. These include but are not limited to:

1. Failure to produce work of acceptable quality, accuracy, quantity, promptness, work habits, or by established deadlines;
2. Deficiencies in performance as required in the work plan or as noted in the performance evaluation;
3. Inability to follow instructions or procedures, appropriateness of work performed, or demonstrated poor judgement, analysis or decision-making;
4. Insufficient or inappropriate customer service, service delivery, or teamwork;
5. Misuse/abuse of fiscal resources, including a wasteful use of State resources;
6. Absenteeism, tardiness, or other abuses of work time; and

⁴ 25 NCAC 01J .0605(a), (b)

Disciplinary Action Policy

7. Any other factors that, in the opinion of the supervisor and/or manager, are appropriate to determine whether an employee's performance constitutes unsatisfactory job performance.

§ 4.3. What is Just Cause for Grossly Inefficient Job Performance?

Just cause to **issue** disciplinary action for grossly inefficient job performance exists when an employee fails to satisfactorily perform job requirements as specified in their job description, work plan, or as directed by the management of the work unit or agency, and that act or failure to act causes or results in:

1. death or serious bodily injury or creates conditions that increase the chance for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) for whom the employee has responsibility; or
2. the loss of or damage to State property or funds that results in a serious adverse impact on the State or work unit.

§ 4.4. What is Just Cause for Unacceptable Personal Conduct?

Just cause to issue a warning or take other disciplinary action for unacceptable personal conduct may be created by intentional or unintentional acts. The conduct may be job-related (on duty) or off duty so long as there is a sufficient connection between the off duty conduct and the employee's job.

Unacceptable personal conduct means:

1. Conduct for which no reasonable person should expect to receive prior warning;
2. Job-related conduct which constitutes a violation of State or federal law;
3. Conviction of a felony or an offense involving moral turpitude that is detrimental to or negatively impacts the employee's service to the State;
4. The willful violation of known or written work rules;
5. Conduct unbecoming a State employee that is detrimental to State service;
6. The abuse of client(s), patient(s), student(s), or person(s) over whom the employee has responsibility or to whom the employee owes a responsibility, or the abuse of an animal owned by or in custody of the State;

Disciplinary Action Policy

7. Material falsification of a State application or other employment documentation;⁵
8. Insubordination, which means the willful failure or refusal to carry out a reasonable order from an authorized supervisor; and
9. Absence from work after all authorized leave credits and benefits have been exhausted. (See alternatively the *Separation Policy* for information on Separation due to Unavailability, which may apply to situations in which leave credits and benefits have been exhausted.)

Examples of unacceptable personal conduct may include, but are not limited to:

- Use of professional State credentials for personal gain (which may be an example of unacceptable personal conduct type (1) and/or (5) above);
- Serious disruption in the workplace (which may be an example of unacceptable personal conduct type (1), (4) and/or (5) above);
- Subjecting an employee, client, contractor, or customer to intentionally discriminatory treatment or harassment. (which may be an example of unacceptable personal conduct types (1), (2), (4) and/or (5) above); and
- Falsification of work-related documentation, such as a timesheet (which may be an example of unacceptable personal conduct type (1), (4), and/or (5) above).

Under Wetherington v. NC Department of Public Safety, 270 N.C. App. 161 (N.C. Ct. App. Feb. 18, 2020) a manager or supervisor should consider the following factors when deciding about the appropriateness of a disciplinary action for unacceptable personal conduct:

1. The severity of the violations.
2. The subject matter involved.
3. The harm resulting from the violations.
4. Prior work history, including disciplinary and performance history; and
5. The discipline imposed in other cases involving similar violations.

⁵ Staff interpreting this provision should consider N.C.G.S. § 126-30 (see also 25 NCAC .01J 0616) which provides any employee who knowingly and willfully:

- discloses false or misleading information, or
- conceals dishonorable military service; or
- conceals prior employment history or other requested information, either of which are significantly related to job responsibilities

on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment, but the severity of the disciplinary action shall be at the discretion of the agency head. Dismissal shall be mandatory where the applicant discloses false or misleading information in order to meet position qualifications.

Disciplinary Action Policy

§ 5. Types of Disciplinary Action

When just cause exists, any career State employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointment authority. The degree and type of action taken shall be based upon the sound and considered judgement of the employing agency in accordance with this policy and after consultation with the Human Resources Office. Agency legal counsel should be consulted as necessary.

§ 5.1. Written Warning

The supervisor shall monitor and promote the satisfactory performance of work assignments and ensure that employees do not engage in unacceptable personal conduct.

§ 5.1(a) Unsatisfactory Job Performance

When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee shall receive. However, prior to the written warning, the manager/supervisor should provide feedback, as described in the *Performance Management Policy*, to the employee regarding the need for the employee to improve their performance. If performance does not improve following the feedback provided by the manager/supervisor (coaching), a Documented Counseling Session (DCS) shall be conducted prior to beginning disciplinary actions (including a PIP if it is issued as a disciplinary action, as described below) for most performance issues. Any disciplinary action issued for unsatisfactory job performance without a prior DCS must first be approved by the agency HR Director or designee. If performance does not improve after the first written warning, a supervisor may give additional written warnings or a higher level of disciplinary action.

Disciplinary Action Policy

§ 5.1(b) Performance Improvement Plan

A Performance Improvement Plan (PIP) is a disciplinary action only if it is in writing and states it is a disciplinary action.⁶ In order to be considered a disciplinary action, the PIP must also include all other information listed in 25 NCAC 01O .0210. Agencies may issue PIPs or other performance documentation that is not a written warning.

§ 5.1(c) Unacceptable Personal Conduct or Grossly Inefficient Job Performance

The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. However, this policy does not require a written warning before management administers other disciplinary action in these types of cases.

§ 5.1(d) Written warnings shall:

1. Inform the employee in writing that it is a written warning, and not some other non-disciplinary process such as counseling;
2. Inform the employee of the specific issues that are the basis for the warning;
3. Tell the employee what specific improvements, if applicable, shall be made to address these specific issues;
4. Tell the employee the time frame allowed for making the required improvements or corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance⁷ and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
5. Tell the employee the consequences of failing to make the required improvements or corrections.

§ 5.2. Disciplinary Suspension without Pay

An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action. Prior to placing an employee on disciplinary suspension without pay, a management representative shall conduct a pre-

⁶ 25 NCAC 01O .0210

⁷ Unsatisfactory job performance involving absenteeism, tardiness, or other abuses of work time may require immediate improvement.

Disciplinary Action Policy

disciplinary conference with the employee in accordance with the procedural requirements of this policy.

§ 5.2(a) Length of Time for Disciplinary Suspension

A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two work weeks (ten work days). The length of a disciplinary suspension without pay for an employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week (five work days), but not more than two full work weeks (ten work days). The length of a disciplinary suspension for an employee on a non-forty-hour week/schedule shall be no more than 80 hours.

An agency or university has the option of imposing the same periods of disciplinary suspension without pay upon all employees as long as the time period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

Type of Employee	Minimum Period for Disciplinary Suspension	Maximum Period for Disciplinary Suspension	Minimum Time Block
Subject to FLSA	1 work day	2 work weeks (10 work days)	At least 1 work day
Exempt from FLSA	1 work week (five work days)	2 work weeks (10 work days)	1 work week (five work days) but no portion of a full work week.

§ 5.3. Demotion

Any employee may be demoted as a disciplinary measure. Demotion may be made based on unsatisfactory job performance, grossly inefficient job performance or unacceptable personal conduct. An employee may be demoted for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action.

Disciplinary Action Policy

Prior to demoting an employee, a management representative shall conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements of this policy.

Disciplinary demotions must be conducted in accordance with the appropriate salary administration policies. (See *Demotion and Reassignment Policy*)

§ 5.4. **Dismissal**

Dismissal may be a result of unsatisfactory job performance, grossly inefficient job performance or unacceptable personal conduct. An employee may be dismissed for disciplinary purposes for unsatisfactory job performance after the receipt of at least two prior disciplinary actions, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action.

Prior to dismissing an employee, a management representative shall conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements of this policy.

§ 5.5. **Required Consultation**

The supervisor recommending dismissal must discuss the recommendation with appropriate agency management, including Human Resources. Agency legal counsel should be consulted as necessary. Upon approval by agency management, a pre-disciplinary conference shall be held with the employee.

§ 6. **Procedures for Issuing Disciplinary Action Other Than a Written Warning**

Prior to the decision to issue a disciplinary action other than a written warning, the following procedures must be followed in accordance with this policy. Before a manager/supervisor can issue a disciplinary action of suspension, demotion, or dismissal, a Pre-Disciplinary Conference (PDC) must be held. A PDC is not required if management intends to issue a written warning.

Disciplinary Action Policy

§ 6.1. Prerequisites for Disciplinary Action

Unsatisfactory Job Performance	Unacceptable Personal Conduct or Grossly Inefficient Job Performance
<ol style="list-style-type: none"> 1. The employee must have a current unresolved incident of unsatisfactory job performance. 2. Demotion or suspension: the employee must have at least one active disciplinary action (these do not need to be related to the current incident). 3. Dismissal: the employee must have at least two active disciplinary actions (these do not need to be related to the current incident). * 4. A Pre-Disciplinary Conference (PDC) must have been held with the employee. 	<ol style="list-style-type: none"> 1. The employee must have a current unresolved incident of unacceptable personal conduct or grossly inefficient job performance. 2. A Pre-Disciplinary Conference (PDC) must have been held with the employee.

Note: Disciplinary actions related to personal conduct may be included in the progressive system for performance-related dismissal provided the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal based on unsatisfactory job performance.

§ 6.2. Active Disciplinary Actions

Disciplinary actions issued for unsatisfactory job performance, grossly inefficient job performance, or unacceptable personal conduct are all subject to becoming inactive for the purposes of counting towards the number of prior disciplinary actions needed for further discipline. Disciplinary actions are deemed inactive if:

1. the manager or supervisor notes in the employee's file that the reason for the disciplinary action had been resolved or corrected;
2. the purpose of a performance based disciplinary action has been achieved, as evidenced by an overall performance rating at an acceptable level or better and

Disciplinary Action Policy

satisfactory performance in the goal(s) and/or organizational value(s) cited in the disciplinary action;⁸ or

3. 18 months have passed since the disciplinary action, and the employee does not have another active disciplinary action which occurred within the last 18 months.

If an employee receives a new disciplinary action while he/she has an active disciplinary action in their personnel file, the oldest active disciplinary action(s) in the file will take on the life span of the most recent disciplinary action, not to exceed an additional 18 months (that is, the action cannot remain active for more than 36 months). The actions do not have to be related in content.

§ 7. Procedures for Pre- Disciplinary Conference (PDC)

§ 7.1. Prior to the Conference

Before demotion, suspension or dismissal of an employee:

- A supervisor or management designee must schedule and conduct a Pre-Disciplinary Conference (PDC) after discussing their recommendation with the appropriate agency management and receiving management's authorization to hold the PDC.
- The supervisor or management designee must give the employee advance written notice (at least 24 hours) of the conference. While a minimum of twenty-four (24) hour's notice to the employee is required, advance notice should be as much time as practical under the circumstances.
- The notice must inform the employee of the type of disciplinary action being considered (demotion, suspension or dismissal), that a lesser disciplinary action is possible, the conference time and location, and the specific acts or omissions that are the reasons for the recommendation.
- If a demotion is being considered, the supervisor must inform the employee if the demotion may change the employee's compensation rate or classification title.

⁸ Disciplinary actions based only on unacceptable personal conduct or grossly inefficient job performance cannot become inactive due solely to an acceptable performance management rating.

Disciplinary Action Policy

- The person conducting the pre-disciplinary conference must have the authority to recommend or decide what, if any, disciplinary action should be issued to the employee.

The following people may be included in the conference:

- The supervisor or other person chosen by agency management to conduct the conference.
- A second management representative may be present at management's discretion.
- The employee:
 - If the person conducting the conference chooses, security may be present. In lieu of security being present, the agency may require that the conference be held virtually.
 - In addition to the participants in the conference noted above, agency procedures may provide for one additional neutral party if agreed upon by the employee and management.

§ 7.1(a) **Virtual Pre-Disciplinary Conference**

The pre-disciplinary conference may be held virtually, upon agreement of the agency representative and the employee (except when the agency has security concerns as noted above). Both parties must have access to computer equipment with audio and video capabilities, as well as the ability to send and receive e-mail during the virtual conference.

§ 7.1(b) **Legal Representation**

No attorneys representing either side may attend the conference nor shall any witnesses attend the conference for either party. This provision does not prevent either party from consulting with legal representation.

§ 7.1(c) **Employee Absence**

The employee's failure to attend the PDC after receipt of written notification shall not automatically stop the disciplinary process. In such situations, management must consult with Human Resources to determine whether rescheduling the PDC is warranted.

§ 7.1(d) **Recordings**

There shall be no stenographic, audio, or video recording of the pre-disciplinary conference by any participant. However, either party may take notes of the conversation during the PDC.

Disciplinary Action Policy

§ 7.2. During the Conference

During the conference, the person conducting the conference must:

- Give the employee written notice (hard copy or electronic) that the PDC cannot be recorded by either party or attended by attorney representatives;
- Give to the employee written notice (hard copy or electronic) of the recommendation for demotion, suspension or dismissal, including the specific reasons for the proposed disciplinary action and a summary of the facts supporting the recommendation; and
- Give to the employee an opportunity to respond to the recommended disciplinary action, offer facts that are different from those offered by management and offer facts in support of the employee's position. Every effort shall be made by management to ensure an employee has every opportunity to set forth any available information in opposition to the recommendation. This policy does not give an employee the right to have witnesses present at the conference.

§ 7.3. Following the Conference

After the conference, management shall:

- Review all necessary information, consider the response of the employee, and decide on the recommended disciplinary action;
- Allow time to review all necessary information and not communicate the decision to the employee prior to the beginning of the next business day following the conclusion of the pre-disciplinary conference or after the end of the second business day following the completion of the pre-disciplinary conference; and
- If management decides to demote, suspend, or dismiss the employee, then the employee shall receive a written disciplinary action letter either in person or by certified mail (or equivalent) with return receipt requested.

The written disciplinary action letter must include:

1. The basis for the disciplinary action;
2. The effective date of the disciplinary action;
3. The specific acts or omissions that are the reason(s) for the disciplinary action;
4. The employee's right to appeal and a copy of the grievance policy;

Disciplinary Action Policy

5. If the disciplinary action is a dismissal, the employee shall be informed that a copy of the written notice of the final decision is public record and open to inspection per N.C.G.S. § 126-23.

§ 7.3(a) **Effective Date**

The effective date of the dismissal for unsatisfactory job performance shall be determined by management. A career state employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of the dismissal. Instead of providing up to two weeks' working notice, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissal for unsatisfactory job performance. The effective date of the dismissal for unsatisfactory job performance shall be no sooner than the date of the written notice of dismissal and no later than 14 calendar days after the written notice.

§ 7.4. **Failure to Follow Procedure**

Failure to give written reasons for the demotion, suspension, or dismissal, written notice of appeal rights, or to conduct a pre-disciplinary conference is a procedural violation. If an agency fails to follow procedure, the agency shall be subject to the rules of the Commission dealing with procedural violations as described in 25 NCAC 01J .1316.

The time for filing a grievance because of the demotion, suspension, or dismissal does not start until the employee receives written notice of any applicable appeal rights.

§ 7.4(a) **Public Information**

- The date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the agency are public records open to inspection per N.C.G.S. § 126-23.
- If the disciplinary action was dismissal, a copy of the written notice of the final decision including the specific acts or omissions are public records open to inspection per N.C.G.S. § 126-23.
- If an employee is dismissed and appeals their dismissal through the grievance procedure, the final agency decision shall set forth the specific acts or omissions that are the basis of the employee's dismissal. In addition, the employee

Disciplinary Action Policy

shall be informed in the final agency decision letter that the final agency decision letter is a public record and that the agency is required by law to release it pursuant to any public record requests.

§ 7.4(b) **Additional Pre-Disciplinary Conference**

- An additional pre-disciplinary conference is required if the employer receives new information about the allegations of wrongdoing that requires additional investigation and these specific acts or omissions were not included in the initial pre-disciplinary conference notification letter.
- When a pre-disciplinary conference is conducted for a recommended type of disciplinary action, but after the conference, the agency decides to take disciplinary action of a higher degree of seriousness than the one for which the conference was held, it is required that the agency conduct an additional pre-disciplinary conference.
- When a pre-disciplinary conference is conducted for a recommended type of disciplinary action, but after the conference, the agency decides to take disciplinary action of a lesser degree of seriousness than the one for which the conference was held, it is not required that the agency conduct an additional pre-disciplinary conference as long as the employee was notified and had the opportunity to be heard with respect to the behavior which is the basis for the less serious disciplinary action.

However, it is permissible for the agency to conduct such an additional pre-disciplinary conference if the agency determines that it would be appropriate under the circumstances, or if the employee requests the additional opportunity to be heard. For example, if a pre-disciplinary conference is conducted with a recommendation or intent of dismissal and the agency decides to demote rather than dismiss, it would not be necessary to conduct another pre-disciplinary conference unless the agency or employee believes that there are relevant issues that could not have been addressed or were not addressed in the previous pre-disciplinary conference or, if the employee was not notified of the possibility of a lesser degree of disciplinary action.

- If any agency determines an additional PDC is necessary, the agency will follow the procedures described in § 7.1, 7.2 and 7.3 of this policy.

Disciplinary Action Policy

§ 8. Transfer of Disciplinary Action

When an employee transfers to another department or unit, any active written warnings or disciplinary actions will transfer with the personnel file of the employee and will remain in full force at the new work unit until removed by the new employer or made inactive by operation of this policy.

§ 9. Investigatory Leave with Pay

Investigatory leave with pay shall be used to temporarily remove an employee from work status. Placement on investigatory leave with pay does not constitute a disciplinary action. However, the information discovered during the investigation may be the basis of disciplinary action.

§ 9.1. Procedures for Placing an Employee on Investigatory Leave with Pay⁹

- Management must notify an employee in writing (hard copy or electronic) of the reasons for placement on investigatory leave with pay status no later than the second scheduled workday after the beginning of the placement. A placement on investigatory leave with pay may last no more than thirty (30) calendar days without written approval of an extension by the State Human Resources Director (of no more than an additional 30 calendar days).
- When an extension beyond the thirty-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by an agency by the end of the thirty-day period and no further extension has been granted, the agency must either take appropriate disciplinary action based on the findings from the investigation or return the employee to active work status.
- Under no circumstance is it permissible to use placement on investigatory leave with pay for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

⁹ 25 NCAC 01J .0615(a), (b)

Disciplinary Action Policy

§ 9.2. **Acceptable Reasons for Initial Placement of an Employee on Investigatory Leave with Pay¹⁰**

An employee may be placed on investigatory leave with pay for the following reasons:

- To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- To provide time within which to schedule and conduct a pre-disciplinary conference;
- To avoid disruption of the work place and/or to protect the safety of persons or property;
- To facilitate a management directed referral or fitness for duty evaluation to ensure the employee's safety and the safety of others and to obtain medical information regarding the employee's fitness to perform his or her essential job functions.

§ 9.2(a) **Acceptable Reasons for Extending Investigatory Leave with Pay¹¹**

- The matter is being investigated by law enforcement personnel, the investigation is not complete, and the agency is unable to complete its own independent investigation without facts contained in the law enforcement investigation, and the agency is unable to conduct its own investigation;
- A management individual who is necessary for resolution of the matter is unavailable; or
- A person or persons whose information is necessary for resolution of the matter is/are unavailable.

§ 10. **Right of Appeal**

Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.

An agency shall furnish to the employee, as an attachment to the written documentation of any grievable disciplinary action, a copy of the State Grievance Policy.

¹⁰ 25 NCAC 016 .0615(c)

¹¹ 25 NCAC 01J .0316(a)

Disciplinary Action Policy

§ 10.1. Waiver of Appeal Rights

If a disciplinary action is grievable, and the employee fails to timely grieve the disciplinary action, the employee is deemed to have waived the right to contest the validity of the disciplinary action.

§ 11. Policy Responsibilities

§ 11.1. Agency

Through the supervisor, the agency shall:

1. Assure the satisfactory performance of work assigned to an employee of the work unit. The supervisor's determination of what is satisfactory is presumed to be reasonable and factually supported;
2. Maintain and communicate an expectation of acceptable personal behavior by its employees;
3. Initiate a disciplinary action when in the judgement of the supervisor the employee has engaged in behavior prohibited by this policy;
4. Maintain records and provide to the Office of State Human Resources information and statistics on the discipline and dismissal process in a form prescribed by the Office of State Human Resources; and
5. Have personnel trained in the administration of this policy.

§ 11.2. Office of State Human Resources

The Office of State Human Resources shall:

1. Provide for training in the administration of this policy;
2. Provide technical assistance and advice to agencies and universities;
3. Review agency compliance;
4. Establish reasonable benchmarks for program performance; and
5. Report and make recommendations to the State Human Resources Commission on the discipline process.

Disciplinary Action Policy

§ 11.3. State Human Resources Commission

The State Human Resources Commission shall:

1. Identify corrective measures on any agency that:
 - a. Fails to comply with this policy;
 - b. Fails to report in a format prescribed by the Office of State Human Resources; or
 - c. Fails to administer the discipline and dismissal process in a manner that is fair to all parties, equitable, free of unlawful discrimination, and maintains discipline.
-

§ 12. Credentials

By statute, regulation, and administrative rule, some duties assigned to positions in service may be performed only by persons who are duly licensed, registered, or certified as required by the relevant law or policy. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for job classifications established by the State Human Resources Commission.

Failure to obtain or maintain legally required credentials can be dealt with as disciplinary action, or through the *Separation Policy*.

§ 12.1. Falsification of Credentials

Falsification of employment credentials or other documentation about securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a State agency, disciplinary action shall be administered as follows:

1. If an employee was determined to be qualified and was selected for a position based on falsified work experience, education, registration, licensure, or certification information that was a requirement of the position, the employee may be dismissed without warning following a pre-disciplinary conference. An employee dismissed on this basis shall be given a notice of the dismissal in writing that includes specific reason for the dismissal and notice of the employee's right to appeal.
2. In all other cases of post-hiring discovery of false or misleading information, disciplinary action will be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.

Disciplinary Action Policy

3. When credential or work history falsification is discovered before employment with a State agency, the applicant shall be disqualified from consideration for the position in question.
-

§ 13. Definitions

Agency: Organizational units to include agencies, universities, boards, commissions, and other entities subject to the provisions of this policy.

Current Unresolved Incident: An act of unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance for which no disciplinary action has previously been taken by the agency.

Demotions: A personnel action taken, without employee agreement, to discipline the employee, which results in:

- lowering the salary of an employee within their current pay grade, or
- places the employee in a position at a lower pay grade with or without lowering the employee's salary.

Dismissal: The involuntary termination of an employee from employment for disciplinary reasons or for failure to obtain or maintain necessary job-related credentials.

Grossly Inefficient Job Performance: Defined in §4.3 of this Policy.

Inactive Disciplinary Action: A disciplinary action becomes inactive, i.e., cannot be counted towards the number of prior disciplinary actions that must be received before further disciplinary action can be taken for unsatisfactory job performance when:

- the manager or supervisor notes in the employee's personnel file that the reasons for the disciplinary action have been resolved or corrected; or
- the purpose of a performance based disciplinary action has been achieved, as evidenced by an overall performance rating at an acceptable level or better and satisfactory performance in the goal(s) and/or organizational value(s) cited in the disciplinary action, or
- eighteen (18) months have passed since issuance of the warning or disciplinary action and the employee has not received another active disciplinary action during the 18-month timeframe.

Note: The completion of the personnel transactions necessary for a demotion or suspension do not make the disciplinary action inactive. These actions remain active for 18 months.

Disciplinary Action Policy

Insubordination: The willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.

Suspension without Pay: The unpaid removal of an employee from work for disciplinary reasons.

Unacceptable Personal Conduct: Defined in § 4.4 of this Policy.

Unsatisfactory Job Performance: Defined in § 4.2 of this Policy.

§ 14. Sources of Authority

This policy is issued under any and all of the following sources of authority:

- [N.C.G.S. § 126-4\(6\)](#), which authorizes the State Human Resources Commission to establish policies governing the “appointment, promotion, transfer, demotion and suspension of employees.”
- [N.C.G.S. § 126-4\(7a\)](#), which authorizes the State Human Resources Commission to establish policies governing the “separation of employees.”
- [N.C.G.S. § 126-4\(10\)](#), which authorizes the State Human Resources Commission to establish policies governing “other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration.”
- [N.C.G.S. § 126-30\(c\)](#), which requires the State Human Resources Commission to “issue rules and procedures” to implement N.C.G.S. § 126-30, the statute on fraudulent disclosure and willful nondisclosure on applications for State employment.
- [N.C.G.S. § 126-35\(a\)](#), which states, “The State Human Resources Commission may adopt, subject to the approval of the Governor, rules that define just cause.”

It is compliant with the following additional laws and regulations:

- [N.C.G.S. § 126-1.1](#), [126-23](#), and [126-30](#)
- [25 NCAC 01J .0600](#), [25 NCAC 01J .1316](#), and [25 NCAC 01O .0210](#)

Disciplinary Action Policy

§ 15. History of This Policy

Date	Version
December 15, 1969	First version. policy concerning disciplinary action and dismissal designed to solve problems in a fair and equitable manner without prejudice or favoritism.
December 29, 1975	Revised hearing procedure to shorten delay of hearings of new evidence or exceptions to the findings and rulings of the hearing officer.
January 7, 1976	Revised to provide for an impartial departmental employee relations committee. Allows personnel officers to serve only in an advisory capacity on personnel policy during grievance hearings.
September 30, 1977	Revised to provide law enforcement division to correct conduct of law enforcement personnel when said division has specific narrowly defined uses for suspension and the period of suspension does not exceed 3 days.
December 1, 1984	Final Written Warning - As a part of counseling, management may request employee to take up to a day's leave with pay to consider whether or not employee wishes to continue employment. Suspension – a department may extend the period of investigatory suspension without pay beyond the 45-day limit. Permanent employees may file an appeal of disciplinary action.
February 1, 1985	Established procedures for administering the Disciplinary Action, Suspension and Dismissal Policy.
August 1, 1985	Revised pre-dismissal hearing policy due to decision of the US Supreme Court, which defined minimum procedural due process due employees upon being dismissed.
December 1, 1985	Changed pay in lieu of notice to apply to situations other than job performance.
January 1, 1988	Added section on credentials - applicant information and application.
June 1, 1988	Dismissal during probationary or trainee period revised to conform to legislation.

Disciplinary Action Policy

May 1, 2004	Delete the Grandfather provision, which is outdated.
August 1, 1988	Pre-suspension and pre-demotion conferences added. Agencies do not need to inform OSP as disciplinary suspensions without pay since its purpose in monitoring the use has been served.
April 1, 1989	Changed process for filing grievances/
July 1, 1989	Clarification of warnings/reprimands based on personal conduct. Such warnings cannot be used to shorten the mandatory three warning process for job performance dismissal.
November 1, 1989	Employee may be given 2 weeks pay in lieu of notice without getting prior approval. Technical change that requires at least one disciplinary action to be taken in cases of falsification. Deleted pay in lieu of notice for falsification.
March 1, 1990	Allows management to have a witness or security personnel present at predismisal conference if deemed necessary.
March 1, 1991	Employee Appeals & Grievances – revised to require approval of SPC for any settlement or agreement which requires exception to policy.
September 1, 1991	Dismissal part of policy revised. 7-1-93 Change “permanent” to “career.”
August 2, 1993	“Just cause,” unacceptable job performance, unacceptable personal conduct defined.
October 1, 1995	Entire policy revised.
January 1, 2002	Page 18 changed to conform to current rule which states that "A second management representative may be present at management's discretion." Page 19 changed to conform to current rule which states that the decision should not be communicated after the end of the second business day following the completion of the conference.
May 1, 2004	Delete the Grandfather Provision, which is outdated.
July 1, 2004	Disciplinary Action, Suspension and Dismissal Clarified Falsification of Credentials as follows: (1) Deleted last paragraph under “What is

Disciplinary Action Policy

	just cause for grossly inefficient job performance?” (2) Revised paragraph on Obtaining and Maintaining Credentials. (3) Revised Paragraph 1 under Falsification of Credentials.
July 1, 2010	Deletes the out-dated provision for an extension under the definition of Inactive Disciplinary Action. “Extensions” of disciplinary actions were permitted initially to provide a smooth changeover from a system with no time limits on disciplinary actions to a system with an 18 month time limit. Since we are now well beyond 18 months past 1995, this provision is no longer needed and is occasionally confusing.
February 1, 2011	The 2010 General Assembly passed House Bill 961 which, among other things, made the dismissal letter public information. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.
October 1, 2017	Updated to support the performance management policy, clarify or expand existing information in the policy, and delete outdated portions of the policy. The specific disciplinary procedures have not changed.
August 7, 2023 (effective September 15, 2023)	All sections of the policy revised. Added cross references to other policies, removed gendered language, revised language that was inconsistent with the North Carolina Administrative Code to be consistent with the Code, including the definition of Unacceptable Personal Conduct, added footnotes with citations to the Administrative Code, removed definitions that were already written elsewhere in policy, and added reference to specific policy section.

Grievance Policy

Contents:

§ 1.	Policy	2
§ 2.	Objectives	2
§ 3.	Definitions	2
§ 4.	Grievable Issues and Who May Grieve.....	5
§ 5.	Grievance Process for All Grievable Issues.....	9
§ 6.	Unlawful Discrimination, Harassment, or Retaliation Grievance Procedures.....	10
§ 6.1.	Option 1: EEO Informal Inquiry for Unlawful Discrimination, Harassment or Retaliation	10
§ 6.2.	Option 2 - External Filing of a Discrimination Charge	11
§ 6.3.	Option 3 - Simultaneous Internal and External Filing of a Discrimination Charge	11
§ 7.	Informal Discussion.....	11
§ 8.	Grievance Process for Disciplinary Actions	13
§ 9.	Formal Internal Grievance Process.....	13
§ 10.	Step 1 - Mediation.....	13
§ 10.1.	Mediation Process	13
§ 10.2.	Location and Time Allocation.....	13
§ 10.3.	Limited to Office of State Human Resources-Approved Mediators	14
§ 10.4.	Mediation Attendees.....	14
§ 10.5.	Post Mediation	14
§ 10.6.	Limitations on a Mediation Agreement	15
§ 10.7.	Confidentiality of Documents Produced in Mediation	16
§ 10.8.	Mediation Agreement Approval	16
§ 10.9.	Mediation Responsibilities	16
§ 11.	Step 2 – Hearing.....	18
§ 11.1.	Hearing Officer or Hearing Panel Process.....	18
§ 11.2.	Right to Challenge Appointed Hearing Officer or Hearing Panel Members	19
§ 11.3.	Hearing Attendees.....	19
§ 11.4.	Grievance Presented to Hearing Officer or Hearing Panel.....	19
§ 11.5.	Proposed Recommendation for Final Agency Decision.....	20
§ 11.6.	Office of State Human Resources Review	20
§ 11.7.	Final Agency Decision	20
§ 11.8.	Settlement Approval	21
§ 11.9.	Hearing Responsibilities	21
§ 12.	Appeal to the Office Of Administrative Hearings.....	22
§ 12.1.	Agency Requirements to Notify Grievant of Appeal Rights	22
§ 12.2.	Grievant Access to the Office of Administrative Hearings	22
§ 13.	Responsibilities for the Employee Grievance Policy	23
§ 13.1.	Agency Human Resources Responsibilities	23
§ 13.2.	Office of State Human Resources Responsibilities	23
§ 14.	Written Responses.....	24
§ 15.	Savings Clause.....	24
§ 16.	Sources of Authority.....	24
§ 17.	History of This Policy	25

Grievance Policy (cont.)

§ 1. Policy

It is the policy of North Carolina State government that a grievance process exists to allow for prompt, fair and orderly resolution of grievances arising out of employment. Each agency shall adopt this Employee Grievance Policy as approved by the State Human Resources Commission. Agencies may supplement this policy by developing additional internal procedures beyond the informal discussion process for issues that may only be grieved at the agency level.

§ 2. Objectives

In establishing this Employee Grievance Policy, the State Human Resources Commission seeks to achieve the following objectives:

- Provide procedural consistency across the agencies of North Carolina State government;
- Ensure employees have access to grievance procedures to address grievable issues timely, fairly, and without fear of reprisal; and
- Resolve workplace issues efficiently and effectively.

§ 3. Definitions

The following are definitions of terms used in this policy:

Term	Definition
Agency	A State department, office, board, or commission.
Alleged Event or Action	The precipitating workplace event or action, or the receipt of notice of an event or action that is the basis for filing a grievance or complaint.
Applicant	A person who submits an application for initial hire, promotion or reemployment for a position in a State agency.
Career State Employee	A State employee who is in a permanent position with a permanent appointment and 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 North Carolina Human Resources Act for the immediate 12 preceding months. Employees who are hired by a State agency, department or

Grievance Policy (cont.)

	<p>university in a sworn law enforcement position and who are required to complete a formal training program prior to assuming law enforcement duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months.</p>
Complainant	<p>An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates an informal complaint through the Equal Employment Opportunity (EEO) Informal Inquiry process.</p>
Contested Case Issue	<p>A grievable issue that may be appealed to the Office of Administrative Hearings.</p>
Equal Employment Opportunity Informal Inquiry	<p>An informal process for addressing allegations of unlawful discrimination, harassment and retaliation that may facilitate a resolution prior to the filing of a grievance.</p>
Final Agency Decision	<p>The final decision issued by the Agency Head that concludes the internal grievance process.</p>
Formal Internal Grievance Process	<p>The process available to an applicant, probationary State employee, former probationary State employee, career State employee or former career State employee to file a formal grievance based on issues that are defined as grievable by State statute.</p>
Formal Internal Grievance Process Timeframe	<p>The internal grievance process must be completed within 90 calendar days. Time spent in the Informal Discussion and the EEO Informal Inquiry is not included in the 90-calendar day timeframe.</p>
Grievable Issue	<p>A workplace event or action as defined by NC State statute as grievable that allows an eligible employee to challenge the alleged workplace event or action through established grievance procedures for resolution.</p>
Grievant	<p>An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates a grievance.</p>

Grievance Policy (cont.)

Hearing	A proceeding overseen by a Hearing Officer or Hearing Panel that allows a grievant to present information relevant to the nature of the grievance and the remedies sought.
Hearing Officer	An officer appointed by an agency to oversee the proceedings of a hearing and submit a proposed recommendation for a Final Agency Decision (FAD).
Hearing Panel	An agency appointed panel of no less than three members selected to conduct a hearing. The designated panel chair has the responsibility to oversee the proceedings of the hearing and submit a proposed recommendation for a Final Agency Decision.
Impasse	An impasse occurs when mediation does not result in an agreement.
Informal Discussion	An informal process for addressing a grievable issue that may facilitate a resolution prior to the filing of a formal grievance and the process for addressing issues for which one may not file a formal grievance.
Mediation	The process in which the grievant and the agency respondent use a neutral third party(s) to attempt to resolve a grievance in a mutually acceptable manner. Responsibility for resolving the grievance rests with the parties.
Mediation Agreement	The written agreement resulting from the successful resolution of a grievance reached in mediation. The Mediation Agreement is legally binding on both parties.
Mediator	A neutral third party(s) approved by the Office of State Human Resources (OSHR) whose role is to guide the mediation process, facilitate communication, and assist the parties to generate and evaluate possible outcomes for a successful resolution. A mediator does not act as a judge and does not render decisions.
Probationary State Employee	A State employee who is exempt from the provisions of the North Carolina Human Resources Act only because the employee has not been continuously employed by the State for the time period required to become a career State employee.

Grievance Policy (cont.)

Respondent	A designated agency representative who has the authority to negotiate an agreement, as appropriate, on behalf of the agency to resolve a grievance.
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§ 4. Grievable Issues and Who May Grieve

The following tables list all issues that may be grieved by an applicant for State employment, a probationary State employee or former probationary State employee, and a career State employee or former career State employee.

The following issues may be grieved at the **agency level only** through the Informal discussion process outlined in Section 7 of this policy, however the employee shall not proceed to the formal internal grievance process. If applicable, employees may follow any supplemental agency procedure for issues that may be grieved at the agency level only.

Applicant for State employment (initial hire, promotion or reemployment)	<ol style="list-style-type: none"> 1. Denial of request to remove inaccurate and misleading information from applicant file (excludes the contents of a performance appraisal and written disciplinary action) 2. Denial of National Guard preference as provided for by law.
Probationary State employee or former probationary State employee	<ol style="list-style-type: none"> 1. Denial of request to remove inaccurate and misleading information from personnel file (excludes the contents of a performance appraisal and written disciplinary action) 2. Denial of National Guard preference as provided for by law.
Career State employee or former career State employee	<ol style="list-style-type: none"> 1. Denial of request to remove inaccurate and misleading information from personnel file (excludes the contents of a performance appraisal and written disciplinary action) 2. Denial of National Guard preference as provided for by law. 3. Overall performance rating of less than “meets expectations” or equivalent as defined in the Performance Management Policy

The following issues must first be grieved through the formal internal grievance process. If the grievant is not satisfied with the Final Agency Decision (FAD), the grievant may appeal to the Office of Administrative Hearings.

Grievance Policy (cont.)

Who May File	Grievable Issues
<p>Applicant for State employment (initial hire, promotion or reemployment)</p>	<ul style="list-style-type: none"> • Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law) • Denial of veteran’s preference as provided for by law • Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been discriminated against in his or her application for employment • Retaliation for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the applicant believes that he or she has been retaliated against in his or her application for employment

Grievance Policy (cont.)

<p>Probationary State employee or former probationary State employee</p>	<ul style="list-style-type: none"> • Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law) • Denial of veteran’s preference as provided for by law • Any retaliatory personnel action for reporting improper government activities (“whistle blower”) • Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment. • Retaliation against an employee for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment
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Grievance Policy (cont.)

<p>Exempt Managerial employee</p>	<ul style="list-style-type: none"> • Denial of veteran’s preference as provided for by law • Unlawful discrimination or harassment based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment. • Retaliation against an employee for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex (including sexual orientation, gender identity and expression, and pregnancy), age, disability, genetic information, or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment
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Advisory Note: Certain statutory exempt employees may be able to grieve denial of veteran’s preference as provided for by law. Refer to N.C.G.S. § 126-82(d) and § 126-83 for details.

In addition to the grievable issues listed above, a career State employee or former career State employee may also grieve the following issues.

<p>Career State employee or former career State employee</p>	<ul style="list-style-type: none"> • Dismissal, demotion, or suspension without pay for disciplinary reasons without just cause • Involuntary non-disciplinary separation due to unavailability • Denial of reemployment or hiring due to denial of reduction in-force priority as required by law (N.C.G.S. § 126-7.1) • Denial of promotional opportunity due to failure to give priority consideration for promotion to a Career State employee as required by law (N.C.G.S. § 126-7.1)
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Grievance Policy (cont.)

§ 5. **Grievance Process for All Grievable Issues**

- A. A grievance or complaint must be initiated in accordance with this policy within **15 calendar days** of the alleged event or action that is the basis of the grievance.
1. Any grievance or complaint that alleges unlawful discrimination, harassment or retaliation shall be addressed and completed through the Equal Employment Opportunity (EEO) Informal Inquiry process before being considered in the formal internal grievance process.
 2. All grievable issues, except for issues pertaining to discrimination, harassment, retaliation, disciplinary actions, and non-disciplinary separation due to unavailability must first be discussed with the immediate or other appropriate supervisor in the employee's chain of command or other appropriate personnel or agency or university that has jurisdiction regarding the alleged event or action that is the basis of the grievance prior to filing a formal internal grievance. The informal discussion shall not be part of grievances related to disciplinary actions as well as non-disciplinary separation due to unavailability.
- B. Disciplinary action and non-disciplinary separation due to unavailability grievances shall bypass the Informal Discussion and proceed directly to the formal internal grievance process. Disciplinary action grievances (i.e., dismissal, suspension without pay, demotion) that include both an allegation of unlawful discrimination, harassment, or retaliation and an allegation that the disciplinary action lacks just cause shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. Likewise, a grievance that involves both a separation due to unavailability and an allegation of unlawful discrimination, harassment or retaliation shall first be addressed through the EEO Informal Inquiry process before proceeding to the formal internal grievance process. After the EEO Informal Inquiry process is completed, the employee may pursue, under the procedures below, all remaining grievable issues that are eligible to be considered in the formal grievance process.
- C. Grievances that are untimely filed or do not contain a grievable issue as defined in Section 4 of this policy shall not proceed through the grievance process. Grievable issues that have not been substantiated or responded to by the agency shall still be permitted to proceed through the grievance process.
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Grievance Policy (cont.)

§ 6. Unlawful Discrimination, Harassment, or Retaliation Grievance Procedures

§ 6.1. Option 1: EEO Informal Inquiry for Unlawful Discrimination, Harassment or Retaliation¹

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee (hereafter referred to as complainant) alleging unlawful discrimination, harassment or retaliation shall first file a complaint with the agency Equal Employment Opportunity (EEO) Officer or other designated personnel within **15 calendar days** of the alleged discriminatory or retaliatory act that is the basis of the complaint.

If the complainant alleges facts that would constitute unlawful discrimination, harassment, or retaliation as prohibited by law, the complaint will be investigated as a part of the agency's EEO Informal Inquiry. The investigation will determine if the facts related to the allegations support a finding of reasonable cause, or no reasonable cause, to believe unlawful discrimination, harassment, or retaliation occurred.

The EEO Informal Inquiry should be completed in a prompt timeframe **not to exceed 90 calendar days**. The agency has **75 calendar days** from receipt of the complaint to investigate and respond to the complainant, unless the complainant and the employer mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension shall not exceed **15 calendar days**.

If there is reasonable cause to believe that unlawful discrimination, harassment, or retaliation occurred, management shall attempt to take appropriate action to resolve the matter. The agency shall inform the Complainant in writing regarding the conclusions of the EEO Informal Inquiry, including applicable appeal rights. If the complaint is successfully resolved, the complainant will sign a letter of agreement with the agency detailing the terms of the resolution. The agency shall ensure that the terms of the agreement under the control of the agency are implemented. If the complaint is not successfully resolved, the Complainant has 15 calendar days from receipt of the written conclusions of the EEO Informal Inquiry to file a formal grievance, which will commence with Step 1 mediation. If the complainant has not been sent a response from the agency after 90 calendar days from the

¹ Any employee, regardless of whether they are exempt from the SHRA, may utilize the EEO Informal inquiry process to raise a complaint related to discrimination, retaliation, or harassment. This does not allow employees exempt from the provisions of N.C.G.S. § 126-34.01 and § 126-34.02 to proceed to the formal internal grievance process.

Grievance Policy (cont.)

agency's receipt of the EEO Informal Inquiry, the complainant may continue the process by filing a formal grievance.²

At any point in the grievance process, the complainant/grievant has the right to bypass discussions with or review by the alleged offender. Time spent in the EEO Informal Inquiry is not a part of the formal internal grievance process.

§ 6.2. Option 2 - External Filing of a Discrimination Charge

The complainant alleging unlawful discrimination, harassment or retaliation has the right, at any time, to bypass or discontinue the EEO Informal Inquiry or the formal internal grievance process and file a charge directly with the Equal Employment Opportunity Commission (EEOC). The complainant may not, however, file a contested case with the Office of Administrative Hearings if the internal process has not been completed. Information about filing an EEOC charge and deadlines for filing the charge can be found at: <https://www.eeoc.gov/filing-charge-discrimination> and the EEOC Public Portal at <https://publicportal.eeoc.gov> or by calling the EEOC regional offices located in Raleigh, Greensboro and Charlotte at 1-800-669-4000.

Information about filing through the Civil Rights Division of the Office of Administrative Hearings can be found at: <https://www.oah.nc.gov/civil-rights-division> or by calling 984-236-1850.

§ 6.3. Option 3 - Simultaneous Internal and External Filing of a Discrimination Charge

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee may file simultaneously with the Equal Employment Opportunity Commission at any point in either the EEO Informal Inquiry or the formal internal grievance process.

§ 7. Informal Discussion

A request for an Informal Discussion must occur within **15 calendar days** of the alleged event or action that is the basis of the grievance. Prior to filing a grievance about

² The 15 calendar day period in which a complainant must file a formal grievance to continue the process does not begin until a written response is received by the complainant.

Grievance Policy (cont.)

any issue, excluding unlawful discrimination, harassment or retaliation, disciplinary actions, and non-disciplinary separation due to unavailability, the employee shall first discuss the grievable issue with the immediate, or other appropriate supervisor in the employee's chain of command, or other appropriate personnel or agency that has jurisdiction regarding the alleged event or action that is the basis of the grievance.

The employee must clearly declare to the supervisor or other appropriate personnel that the Informal Discussion request is regarding an alleged event or action that is the basis of a potential grievance. The supervisor or other appropriate personnel shall confirm the intention of the requested Informal Discussion with the employee before beginning discussions.

This informal process shall be completed within **15-calendar days** after the request for an Informal Discussion is made by the employee. However, if progress is being made toward a successful resolution to the dispute or if there are occurrences that are unavoidable or beyond the control of either party (e.g. illness), both parties may agree to an extension. This extension must be agreed to in writing and approved by HR.

The supervisor or other appropriate personnel shall notify Human Resources when an employee requests an Informal Discussion. The supervisor or other appropriate personnel is responsible for attempting to resolve the grievable issue with the employee. Human Resources shall serve as a content and procedural resource during these discussions and will work with both parties to strive for a timely resolution.

The outcome of the Informal Discussion shall be communicated to the employee and Human Resources by the supervisor or other appropriate personnel in writing. If the issue is not successfully resolved or if no written response is provided within the **15 calendar day** timeframe, the employee may proceed by filing a formal grievance. An employee has **15 days** from the date the informal discussion process concludes (either by receiving a written response or by the time frame, including agreed upon extended timeframes, ending with no written response) to file a formal internal grievance. Time spent in the Informal Discussion is not a part of the formal internal grievance process.

Grievance Policy (cont.)

§ 8. **Grievance Process for Disciplinary Actions**

Disciplinary action grievances, to include dismissal, demotion, suspension without pay, as well as non-disciplinary separation due to unavailability shall bypass the Informal Discussion and proceed directly to the formal internal grievance process.

§ 9. **Formal Internal Grievance Process**

The employee must begin the formal internal grievance process by filing a written grievance request to the Human Resources Director or designee within the agency in accordance with the Employee Grievance Policy. The employee must complete any of the required informal processes within the stated time frames. The employee must file a formal grievance within 15 calendar days of the alleged event or action that is the basis of the grievance or within 15 days of receiving a response at the conclusion of any informal process(es). Mediation is Step 1 in the formal internal grievance process.

§ 10. **Step 1 - Mediation**

Mediation is the process in which a grievant and an agency respondent use a neutral third party(ies) to attempt to resolve a grievance. Mediation provides the grievant and the agency respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution.

§ 10.1. **Mediation Process**

OSHR maintains a process to assign mediators to grievances upon agency request. The agency shall submit the request for mediation within **3 business days** of receipt of the grievance. The mediation process shall be concluded **within 35 calendar days** from the filing of the grievance unless the grievant and the agency mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party.

Any extension of Step 1 will not extend the **90-calendar day** timeline.

§ 10.2. **Location and Time Allocation**

Mediation shall be conducted in a location identified by the agency. The manner in which the mediation is conducted, either virtually, telephonic or in-person, shall be approved by the OSHR Mediation Coordinator or designee. The mediation shall be

Grievance Policy (cont.)

scheduled for an amount of time determined by the mediator(s) to be sufficient. Mediation may be recessed by the mediator(s) and reconvened at a later time.

§ 10.3. **Limited to Office of State Human Resources-Approved Mediators**

Only OSHR-approved mediators will mediate grievances for State agencies. OSHR will maintain a pool of qualified mediators to facilitate mediations. Mediators will not be selected from the agency requesting the mediation.

§ 10.4. **Mediation Attendees**

The following individuals may attend a mediation:

- The grievant;
- The designated agency representative serving as the respondent who has the authority to negotiate an agreement, as appropriate, on behalf of the agency; and
- The OSHR-appointed mediator(s).
- The OSHR Statewide Mediation Coordinator or designees may attend mediations as observers.

Emergency substitution of a mediator must be approved by the OSHR Mediation Coordinator or designee. Attorneys and other advisors may not attend the mediation. Either the grievant or respondent may ask for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.³

§ 10.5. **Post Mediation**

When an agreement is reached, the following shall occur:

- The grievant and the respondent will sign a Mediation Agreement that states the terms of agreement and is a legally binding document.

³ Rules of Mediation for Matters Before the Clerk of Superior Court, Rule 4: (d)

Grievance Policy (cont.)

- The original signed Mediation Agreement is provided to the agency Human Resources Office. A copy of the signed Mediation Agreement is provided to the grievant, respondent and the OSHR Mediation Coordinator.
- The agency shall ensure that terms of the mediation agreement under the control of the agency are implemented.

When an agreement is not reached (impasse), the following shall occur:

- The grievant and the respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
- The original signed Notice of Impasse is provided to the agency Human Resources Office. A copy of the signed Notice of Impasse is provided to the grievant, the respondent and the OSHR Mediation Coordinator.
- Before signing the impasse form, the agency shall inform the grievant of the Step 2 grievance process, the corresponding Step 2 grievance form and that the filing must be received by the agency within 5 calendar days of the date on which mediation resulted in an impasse.

§ 10.6. **Limitations on a Mediation Agreement**

The Mediation Agreement shall serve as a written record and shall:

- Not contain any provision(s) contrary to State Human Resources Commission policies, administrative rules, and applicable State and Federal law;
- Not contain any provision(s) that exceeds the scope of the parties' authority; and
- Not be transferable to another State agency.

When mediation resolves a grievance but it is determined upon agency or OSHR review that one or more provisions of the Mediation Agreement do not comply with the State Human Resources Commission policies or rules or applicable State or Federal laws, the mediation shall be reconvened to resolve the specific issue(s). If the parties are unable to resolve the noncompliance issue(s), the mediation will impasse and the grievant may proceed to Step 2 of the internal grievance process. This will not extend the **90 calendar day** timeframe of the formal internal grievance process.

Should additional information or clarification be needed to effectuate the terms of the agreement, communication with all parties may occur remotely. If the mediator who

Grievance Policy (cont.)

facilitated the mediation is not available, the OSHR Mediation Coordinator or designee will have the authority to stand in place of the mediator in these communications.

§ 10.7. **Confidentiality of Documents Produced in Mediation**

All documents generated during mediation and any communications shared in connection with mediation are confidential to the extent provided by law.

§ 10.8. **Mediation Agreement Approval**

The approval of the Director of the Office of State Human Resources or designee is required for mediation agreements that need a personnel transaction to be processed, except where the only personnel action is the substitution of resignation for dismissal. If a mediation agreement involves an exception to State Human Resources Commission policy, the approval of the Director of the Office State Human Resources or designee is required.

Mediation agreements requiring OSHR approval shall follow OSHR Settlement Guidelines.

§ 10.9. **Mediation Responsibilities**

§ 10.9(a) **Grievant Responsibilities**

The grievant is responsible for:

- Attending the mediation as scheduled by the agency;
- Notifying and receiving approval from Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the grievant prevent attendance at the mediation;
- Preparing for the mediation by being able to provide clear and concise information regarding the issues surrounding the grievance and the remedies sought; and
- Making a good faith effort to resolve the grievance.

A grievant who has an unexcused failure to attend mediation as scheduled forfeits the right to proceed with the internal grievance process.

Grievance Policy (cont.)

§ 10.9(b) Respondent Responsibilities

The respondent is responsible for:

- Attending the mediation as scheduled by the agency;
- Notifying Human Resources, in advance of the scheduled mediation, if occurrences that are unavoidable or beyond the control of the respondent prevent attendance at the mediation;
- Preparing for the mediation by becoming knowledgeable regarding the issues surrounding the grievance and remedies sought;
- Consulting with management, Human Resources and/or legal counsel regarding possible areas of negotiation for grievance resolution; and
- Making a good a faith effort to resolve the grievance.

If a respondent has an unexcused failure to attend mediation as scheduled, the grievant may either proceed to Step 2 of the Formal Grievance Process or reschedule the mediation if time allows as determined by the OSHR Mediation Coordinator. If the mediation is not rescheduled, the agency must provide notice of appeal rights to the grievant and the Step 2 Grievance Form must be filed within 5 calendar days of the original date of mediation. This will not extend the 90 calendar day timeframe of the formal grievance process.

§ 10.9(c) Agency Human Resources Responsibilities

The agency is responsible for:

- Administering the mediation program within the agency;
- Appointing an agency mediation coordinator, and other personnel as needed, to manage and schedule mediations;
- Ensuring that the grievant receives appropriate information about the mediation process;
- Designating a qualified and informed agency representative to serve as the respondent for each mediation who will have the authority to negotiate an agreement, as appropriate, on behalf of the agency that resolves the grievance;
- Ensuring that the selected respondent is adequately prepared for the mediation and has had discussions with management and Human Resources to identify possible areas of negotiation for grievance resolution;

Grievance Policy (cont.)

- Ensuring appropriate personnel (management, Human Resources and/or legal counsel) are available to respond to any issues that may arise during the course of the mediation;
- Designating appropriate personnel to be available to review the terms of the draft agreement to ensure it is complete, complies with State Human Resources Commission policies or rules or applicable State or Federal laws, and contains the necessary information for implementation;
- Ensuring confidentiality of the mediation to the extent provided by law;
- Identifying suitable locations for mediations;
- Using only OSHR-approved mediator(s) for each mediation session;
- Reimbursing mediators for travel at state-approved rates;
- Providing nominees for consideration who meet the qualifications set forth by OSHR to be trained as OSHR mediators; and
- Working with agency management to obtain funding for the initial and ongoing training of agency nominated mediators.

§ 10.9(d) **Office of State Human Resources Responsibilities**

The Office of State Human Resources is responsible for:

- Developing and maintaining mediation procedures and forms;
- Establishing mediator eligibility and training requirements;
- Maintaining a pool of qualified mediators;
- Providing employment mediation trainings;
- Maintaining a process for assigning mediators upon agency request;
- Ensuring that mediators adhere to the OSHR Mediator Code of Conduct; and
- Conducting ongoing studies/analyses to evaluate program effectiveness.

§ 11. **Step 2 – Hearing**

§ 11.1. **Hearing Officer or Hearing Panel Process**

If mediation does not result in a resolution at Step 1, the grievant is entitled to proceed to Step 2 of the internal grievance process. The Step 2 grievance form must be received by the agency within **5 calendar days** of the date on which mediation resulted in an impasse. Human Resources will notify the grievant of the opportunity to present

Grievance Policy (cont.)

the grievance to a reviewer(s) outside of the grievant's chain of command, e.g., Hearing Officer or Hearing Panel. The hearing process shall be concluded within **35 calendar days** of filing Step 2 of the grievance process unless the grievant and the agency mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension of Step 2 will not extend the **90 calendar day** timeline.

§ 11.2. **Right to Challenge Appointed Hearing Officer or Hearing Panel Members**

The grievant shall have one opportunity to challenge the appointed Hearing Officer or up to 2 members of the Hearing Panel if the grievant believes they cannot render an unbiased recommendation due to a real or perceived conflict of interest. The grievant must submit the basis for the challenge in writing pursuant to their agencies' established process, within **5 calendar days** of the date the grievant receives notification of the name(s) of the Hearing Officer or Hearing Panel. Management will review the challenge and replace the Hearing Officer or Hearing Panel members as appropriate.

§ 11.3. **Hearing Attendees**

- The grievant who initiated the grievance;
- The Hearing Officer or Hearing Panel members;
- Witnesses giving testimony, as approved by the Hearing Officer or Hearing Panel Chair; and
- Appropriate agency and HR representatives.

Attorneys and other advisors may not attend the hearing. Either party may ask the Hearing Officer or the Hearing Panel Chair for a recess at any time to consult with an attorney or other advisor.

There shall be no stenographic, audio, or video recording of the hearing by any participant, except as approved by management in accordance with agency process. .

§ 11.4. **Grievance Presented to Hearing Officer or Hearing Panel**

The Hearing Officer or Hearing Panel Chair will preside over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which

Grievance Policy (cont.)

the grievance is based and the remedies sought. Each party shall be given a fair opportunity to present evidence on the issues to be heard and to question witnesses.

§ 11.5. **Proposed Recommendation for Final Agency Decision**

The Hearing Officer or Hearing Panel Chair will draft a proposed recommendation, including an explanation and justification to support the recommendation, for a Final Agency Decision. The proposed recommendation will be submitted to the Agency Head or designee. The Agency Head or designee shall submit their proposed recommendation for a Final Agency Decision to the Director of the Office of State Human Resources (Director) or designee within the **35 calendar day** timeframe for the Step 2 hearing process. The Agency Head may provide a memorandum with comments on the proposed recommendation to the Director or designee.

§ 11.6. **Office of State Human Resources Review**

The Director of the Office of State Human Resources or designee shall review the proposed recommendation for a Final Agency Decision based on established criteria. The Director or designee may approve as written or may provide recommendations for modification or reversal within **10 calendar days** of the receipt of the proposed recommendation. The proposed Final Agency Decision shall not become final or be issued until reviewed and approved by the Office of State Human Resources.

§ 11.7. **Final Agency Decision**

The agency shall issue the Final Agency Decision to the grievant within **5 calendar days** of receipt of the Office of State Human Resources review of the proposed recommendation. The Final Agency Decision shall be issued in writing **within 90 calendar days** of the initial filing of the grievance.⁴ The Final Agency Decision shall include information about applicable appeal rights.

⁴The requirement to issue the Final Agency Decision (FAD) within 90 calendar days of the filing date is met when the agency transmits the FAD to the grievant within 90 calendar days. The grievant does not have to receive the FAD within 90 days to meet the requirement.

Grievance Policy (cont.)

§ 11.8. **Settlement Approval**

The approval of the Director of the Office of State Human Resources or designee is required for settlements that need a personnel transaction to be processed, except where the only personnel action is the substitution of a resignation for a dismissal. If a settlement involves an exception to the State Human Resources Commission policy, the approval of the Director of the Office of State Human Resources or designee is required.

§ 11.9. **Hearing Responsibilities**

§ 11.9(a) **Grievant Responsibilities**

The grievant is responsible for:

- Attending the hearing as scheduled by the agency;
- Notifying and receiving approval from Human Resources, in advance of the scheduled hearing, if occurrences that are unavoidable or beyond the control of the grievant prevent attendance at the hearing; and
- Preparing for the hearing by being able to present clear and concise information regarding the issues surrounding the grievance and remedies sought.

A grievant who has an unexcused failure to attend a hearing as scheduled forfeits the right to proceed with the internal grievance process.

§ 11.9(b) **Hearing Officer/Hearing Panel Chair Responsibilities**

The Hearing Officer/Hearing Chair is responsible for:

- Calling the hearing to order and establishing the process for the proceedings;
- Maintaining order and decorum;
- Presiding over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which the grievance is based, and the remedies sought
- Ensuring that all parties are allotted adequate time to present evidence and question witnesses; and

Grievance Policy (cont.)

- Submitting a proposed recommendation for a Final Agency Decision on all grievable matters raised by the grievant.⁵

§ 11.9(c) Agency Human Resources Responsibilities

The agency is responsible for:

- Establishing the use of either a Hearing Officer or a Hearing Panel;
- Administering the hearing process within the agency;
- Ensuring that all parties receive appropriate information about the hearing process;
- Establishing a process for the grievant to challenge the appointed Hearing Officer or Hearing Panel members;
- Consulting with OSHR on the proposed Final Agency Decision recommendation; and
- Issuing a Final Agency Decision.

§ 12. Appeal to the Office Of Administrative Hearings

§ 12.1. Agency Requirements to Notify Grievant of Appeal Rights

The Final Agency Decision shall inform the grievant in writing of any applicable appeal rights through the Office of Administrative Hearings for contested case issues.

The grievant must be informed of the following:

- The appeal is made by filing a “Petition for a Contested Case” hearing with the Office of Administrative Hearings;
- The appeal to the Office of Administrative Hearings must be filed within 30 calendar days after the grievant receives the FAD; and
- A fee is charged for filing a Petition for a Contested Case Hearing.

§ 12.2. Grievant Access to the Office of Administrative Hearings

If the grievant has completed the internal grievance process and is not satisfied with the Final Agency Decision, the grievant may file a Petition for a Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be

⁵ A hearing officer may not decline to hear a grievable issue raised by the grievant solely because the agency did not complete the informal inquiry process within the deadline stated in this Policy.

Grievance Policy (cont.)

appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.

A Petition for Contested Case Hearing must be filed within 30 calendar days after the grievant receives the FAD. The grievant may file the appeal at:

Office of Administrative Hearings
1711 New Hope Church Road (mailing and physical address)
Raleigh, NC 27609
984-236-1850

Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: <http://www.ncoah.com/hearings/> or by calling 984-236-1850.

§ 13. Responsibilities for the Employee Grievance Policy

§ 13.1. Agency Human Resources Responsibilities

Each agency shall:

- Adhere to the Employee Grievance Policy as adopted by the State Human Resources Commission;
- Develop and communicate internal grievance procedures as needed;
- Provide current employees and new hires with access to the Employee Grievance Policy;
- Notify all employees of any change to the agency grievance process no later than 30 calendar days prior to the effective date of the change;
- Enter all grievance data in the State's HR/Payroll System as events occur; and
- Provide employee grievance data to OSHR as requested.

§ 13.2. Office of State Human Resources Responsibilities

The Office of State Human Resources shall:

- Present the Employee Grievance Policy to the State Human Resources Commission for approval at any time modifications are made;
- Notify agencies of changes to this policy once approved by the State Human Resources Commission.
- Provide consultation and technical assistance to agencies as needed; and

Grievance Policy (cont.)

- Conduct ongoing studies/analyses to evaluate policy effectiveness.
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§ 14. Written Responses

When required to provide a written response, it is advisable for agency human resources staff to confer with agency legal counsel regarding customized, appropriate content of the various responses to the employee.

Agencies should confer with their legal counsel on when a letter would be considered received by the employee.

§ 15. Savings Clause

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

§ 16. Sources of Authority

- N.C.G.S. § 126-4(9) authorizes the State Human Resources Commission to establish policies and rules on “[t]he 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.”
- N.C.G.S. § 126-34.01 states that employees with a grievance “shall follow the grievance procedure approved by the State Human Resources Commission.”
- N.C.G.S. § 126-34.02 is the statute establishing the grievance appeal process.
- N.C.G.S. § 126-4(17) and § 126-34.2 authorize the State Human Resources Commission, to establish policies and rules for alternative dispute resolution procedures.

Grievance Policy (cont.)

- N.C.G.S. § 126-25 sets out the process for a State employee or applicant to object to material in their employee file.
- N.C.G.S. § 126-35 authorizes the State Human Resource Commission to adopt rules subject to approval of the Governor defining just cause for disciplinary actions.
- 25 NCAC 01J .1302 sets grievance procedure requirements for agencies and universities.

§ 17. History of This Policy

Date	Version
October 1, 2001	Revised to include as grievable issues violation of the FLSA, Age Discrimination Act, FMLA or ADA. (Delete "Failure to follow systematic procedures in reduction in force (not alleging discrimination)."
February 1, 2011	The 2010 General Assembly passed House Bill 961 which, among other things, made the disciplinary letter public information. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.
June 1, 2012	Revised to reflect the changing roles of the State Personnel Commission and the Office of Administrative Hearings in rendering a Decision and Order in contested cases. The Alternative Dispute Resolution Procedures were removed from the policy. There were also other minor editorial and policy clarification changes.
December 1, 2013	(Approved at the October 17 Commission Meeting) Policy replaces two grievance policies (Employee Appeals and Grievances and Employee Mediation and Grievances Process)..Policy was change to comply with the law change that resulted from ratification of HB 834. <ul style="list-style-type: none"> • Creation of two informal grievances processes for alleged unlawful discrimination, harassment or retaliation and for policy violations

Grievance Policy (cont.)

	<ul style="list-style-type: none"> • Mediation is the first step of the internal grievance process. • Step 2: Review by a Hearing Officer or Hearing Panel • Hearing Officer/Panel drafts recommendation for Final Agency Decision • Recommendation will be reviewed by the Director of the Office of State Human Resources • Final agency decision shall be issued in writing within 90 calendar days of the initial filing.
December 1, 2013	<p>(Approved at the December 12 Commission Meeting) As a result of feedback received from various agencies concerning the Dec 1 policy changes approved at the Oct 17 commission meeting, additional changes were made to strengthen and provide additional clarity to the grievance policy. The commission approved a 12-1-2013 retroactive effective date to replace the previous policy they approved effective on that same date. This replaces the previous approved policy.</p>
August 6, 2020	<p>Policy reviewed by Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on August 6, 2020.</p> <ul style="list-style-type: none"> • Policy was updated to include the protected classes of gender identity and sexual orientation following the U.S. Supreme Court decision in Bostock vs. Clayton County. • Term Mediation Director changed to Mediation Coordinator.
February 16, 2023	<ul style="list-style-type: none"> • Expand the timeline for the EEO Informal inquiry to 90 days total to be consistent with the Administrative Code. Agencies would have 75 calendar days from receipt of the complaint to complete an investigation plus 15 additional calendar days if the complainant agrees. • If the complainant has not been sent a response by the agency within 90 calendar days after agency received the complaint, complainant may continue the process by filing a formal grievance.

Grievance Policy (cont.)

	<ul style="list-style-type: none">• Adding “attempt to”: If the letter finds reasonable cause to believe that unlawful actions occurred, “...management shall <u>attempt to</u> take appropriate action to resolve the matter.”• Clarify that agency grievance policies are supplemental in nature.• Add National Guard preference to list of issues that may be grieved at the agency level only.• Add a section identifying the limited set of situations where an exempt managerial employee can file a grievance to OAH. These situations are specified by law (N.C.G.S. § 126-5(c7) and § 126-34.1(a)(2)), and would now be mentioned expressly in the policy. Specifically state that any employee, regardless of whether they are exempt from the SHRA, may utilize the EEO Informal Inquiry process to raise a complaint related to discrimination, retaliation, or harassment. This does not allow employees exempt from the provisions of N.C.G.S. § 126-34.01 and § 126-34.02 to proceed to the formal internal grievance process.• Adding language to clarify time periods in which employees have to act to move through steps of the grievance process.• Changed language re: prohibition of recording in mediations to match the Rules of Mediation.• Adds language to clarify what occurs if the respondent has an unexcused failure to attend a mediation.• Adds sources of authority.
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Reasonable Accommodation Policy

Reasonable Accommodation

Contents:

[Purpose](#)

[Definitions](#)

[Coverage](#)

[Reasonable Accommodations \(Disability\)](#)

[Reasonable Accommodations \(Pregnancy\)](#)

[Accommodations that May Not be Considered Reasonable](#)

[Process to Request Reasonable Accommodations](#)

[Appeals](#)

Purpose

It is the policy of the State of North Carolina to reasonably accommodate qualified individuals with disabilities and those who are pregnant unless the accommodation would impose an undue hardship. While many pregnant individuals and individuals with disabilities can work without accommodation, other qualified applicants and employees face barriers to employment without the accommodation process.

The purpose of this policy is to assist agency and university employers, current employees, and applicants for employment in requesting and processing reasonable accommodation requests. The overall intent of this policy is to ensure that the State of North Carolina fully complies with the Americans with Disabilities Act (ADA), Pregnancy Discrimination Act, the Americans with Disabilities Amendment Act (ADAA), and maintains equal opportunity in employment for all qualified persons with disabilities and those who are pregnant. This policy also prohibits retaliation against employees.

Definitions

Disability – a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or being regarded as having such an impairment.

Essential Functions – the fundamental duties of the position or the primary reasons the position exists.

Pregnant – concerning pregnancy, childbirth, or a related medical condition.

Qualified Individuals with Disabilities - a qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Reasonable Accommodation Policy (cont.)

Reasonable Accommodation – a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability or one who is pregnant to enjoy equal employment opportunities.

Undue Hardship - an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

Coverage

This policy applies to all applicants and employees with qualifying disabilities or those who are pregnant. If requested, reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time or are considered “probationary” or “non-career status”, as well as temporary employees.

Reasonable Accommodation (Disability)

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if requested and if it would not impose an "undue hardship" on the operation of the employer's business.

Reasonable accommodation for a disability may include, but is not limited to:

1. Making existing facilities used by employees readily accessible to and usable by persons with disabilities such as modifying existing office equipment for an employee in a wheelchair.
2. Job restructuring, modifying work schedules, reassignment to a vacant position such as allowing an employee with diabetes regularly scheduled breaks during the workday to eat properly, monitor blood sugar and insulin levels, or allowing an employee with cancer leave to have radiation or chemotherapy treatments.
3. Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters such as providing a deaf applicant a sign language interpreter during the job interview or providing a blind employee someone to read information posted on a bulletin board.

Reasonable Accommodation Policy (cont.)

Agencies may consider proposing temporary accommodation(s) if the agreed-upon accommodation cannot be provided immediately.

Reasonable Accommodations (Pregnancy)

A covered employer is required to make a reasonable accommodation for the pregnancy of a qualified applicant or employee if requested and if it would not impose an "undue hardship" on the operation of the employer's business.

Reasonable accommodations may include:

1. Redistributing marginal or nonessential functions (for example, occasional lifting) that a pregnant worker cannot perform, or altering how a non-essential or marginal function is performed.
2. Modifying workplace policies, such as allowing a pregnant worker more frequent breaks or allowing her to keep a water bottle at a workstation even though keeping drinks at workstations is generally prohibited.
3. Modifying a work schedule so that someone who experiences severe morning sickness can arrive later than her usual start time and leave later to make up the time.

Accommodations that May Not be Considered Reasonable

There are several modifications or adjustments that are not considered forms of reasonable accommodation. An employer does not have to eliminate an essential function from the position, nor is an employer required to lower quality or production standards to make an accommodation, as long as those standards are applied uniformly to employees with or without a disability. An employer does not have to create a new position to accommodate an employee.

An employer is not obligated to provide personal use items needed in accomplishing daily activities both on and off the job (i.e., eyeglasses, hearing aids, prosthetic limbs, or a wheelchair). Furthermore, an employer is not required to provide personal use amenities, such as a refrigerator, if those items are not provided to employees without disabilities.

Reasonable Accommodation Policy (cont.)

Process to Request Reasonable Accommodation

Employees:

1. The employee shall inform their supervisor, EEO Officer, or HR Director or designee of the need for an accommodation. Supervisors who have been notified by an employee of an accommodation need should contact the designated EEO or HR official for assistance.
2. The EEO Officer or HR Director/Designee may request documentation of the individuals' functional limitations to support the request. Any medical documentation must be collected and maintained in accordance with appropriate confidentiality procedures.
3. When a qualified individual with a disability or who is pregnant has requested an accommodation, the employer shall, in consultation with the employee:
 - a. Discuss the purpose and the essential functions of the particular job involved.
 - b. Determine the precise job-related limitation.
 - c. Identify the potential accommodations and assess the effectiveness each would have in allowing the employee to perform the essential functions of the job.

Select and implement the reasonable accommodation that is the most appropriate for both the employee and the employer. While an employee's preference will be given consideration, the employer is free to choose among reasonably effective accommodations and may choose the one that is less expensive or easier to provide.

4. The EEO Officer or HR Director/Designee will work with the employee to obtain technical assistance, as needed.
5. The EEO Officer or HR Director/Designee will provide a written decision to the employee within a reasonable amount of time, not to exceed 30 days from original employee request, unless a longer time is agreed upon by the employee and the employer.

Reasonable Accommodation Policy (cont.)

Applicants

1. The job applicant shall inform the supervisor, EEO Officer, or HR Director/Designee of the need for an accommodation. Hiring officials who have been notified by an applicant of a need for accommodation should contact the designated EEO or HR official for assistance. The EEO Officer or HR Director/Designee will discuss the needed accommodation and possible alternatives with the applicant.
 2. The EEO Officer or HR Director/Designee will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.
-

Appeals

Applicants or employees who are dissatisfied with the decision(s) pertaining to their accommodation request may file a grievance in accordance with the North Carolina State Government employee grievance policy within 15 calendar days of receiving the decision. Applicants or employees may also elect to file a grievance directly with the Equal Employment Opportunity Commission (EEOC). Individuals who file a grievance directly with the EEOC may not, however, file a contested case with the Office of Administrative Hearing if the internal process has not been completed.

Unlawful Workplace Harassment

Contents:

- [Policy](#)
 - [Purpose](#)
 - [Definitions](#)
 - [Coverage](#)
 - [Complaint Process](#)
 - [Prevention Strategies](#)
-

Policy

All employees have the right to work in an environment free from discrimination and harassing conduct. No State employee shall engage in conduct that falls under the definition of unlawful workplace harassment, including sexual harassment discrimination, or retaliation, and no employment decisions shall be made on the basis of race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability.

Purpose

The purpose of this policy is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment or retaliation based on opposition to unlawful workplace harassment of State employees or applicants and to require that every agency shall develop strategies to ensure that work sites are free from unlawful workplace harassment, including sexual harassment discrimination and retaliation.

Definitions

“Unlawful Workplace Harassment” is unsolicited and unwelcomed speech or conduct based of race, religion, color, national origin, ethnicity, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability where:

1. enduring the offensive conduct becomes a condition of continued employment, or
2. the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Unlawful Workplace Harassment

“Sexual Harassment” - Harassment on the basis of sex is a particular type of violation of this unlawful workplace harassment policy and in addition to the previous definition of unlawful workplace harassment, this unlawful workplace harassment policy prohibits the following: “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

“Retaliation” is any adverse action taken against an individual for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older) political affiliation, National Guard or veteran status, genetic information or disability because of opposition to employment practices in violation of the unlawful workplace harassment policy.

Coverage

This policy covers, full-time or part-time employees with either a permanent, probationary, trainee, time-limited or temporary appointment; former employees; and applicants.

Complaint Process

An employee, former employee or applicant alleging unlawful workplace harassment or retaliation may file a complaint following the process outlined in the Employee Grievance Policy located in Section 7 of the State Human Resources Manual.

Prevention Strategies

Each agency head shall develop strategies to prevent unlawful workplace harassment.

The strategies shall at the minimum include:

- a commitment by the agency to the prohibition of unlawful workplace harassment, sexual harassment and retaliation,
- training and other methods to prevent harassing actions,

Unlawful Workplace Harassment

- a process for disseminating information prohibiting unlawful workplace harassment and retaliation to all agency employees

Workplace harassment prevention strategies shall be included as part of the agency's Equal Employment Opportunity (EEO) plan.

Reduction-In-Force

Contents

§ 1. Policy 1

§ 2. Retention Factors 2

Type of Appointment: 2

Relative Efficiency 2

Actual or Potential Adverse Impact 2

Length of Service 3

§ 3. Area of Analysis for RIF: 2

§ 4. Avoiding a RIF 3

§ 5. Office of Human Resources Responsibility 3

§ 6. Agency or University Responsibility 3

§ 7. Notification Requirement 4

§ 8. Appeals 4

§ 9. Leave 4

§ 10. Effective Date and Duration 4

§ 11. History of this Policy 4

§ 1. Policy

An agency or university has the authority to separate an employee whenever it is necessary due to:

- Shortage or loss of funds;
- Shortage or loss of work;
- Abolishment of a position; or
- Other material changes in position duties or organization

No loss of funds shall be required as a precondition for a reduction in force; however, an agency or university may not use the RIF process to circumvent the disciplinary process required to separate or demote an employee for a disciplinary reason.

RIF procedures also apply to position or budgetary changes that result in an involuntary reduction in an employee’s work hours.

§ 2. Retention Factors

Retention of employees in classes affected by a RIF action shall be based on a fair and systematic consideration, at a minimum, of the following factors:

- Type of appointment;
- Relative efficiency;
- Actual or potential adverse impact on the diversity of the work force; and
- Length of service.

Although all retention factors must be evaluated, they may be weighted differently for each RIF event to meet the needs of the employing agency or university.

§ 3. Area of Analysis for RIF:

The analysis may include all or part of an agency (a unique work unit, division or entire agency/university). Differences in operation, work function, funding source, staff, and personnel administration may be considered when determining the appropriate area of analysis. However, the analysis to avoid a RIF must apply to the entire agency/university.

1. Type of Appointment: Neither temporary nor probationary employees in their initial 12 months of employment (or initial 24 months of employment for sworn law enforcement officers) shall be retained in classes in which employees with permanent appointments (those who have satisfactorily completed a probationary or equivalent trial period) must be separated in the same or related class.
2. Relative Efficiency: Relative efficiency shall be expressed as the employee's most recent overall performance rating. Management may also consider the rating for each individual or institutional goal and value when overall performance ratings are equivalent, documented employee skills and ability to perform the remaining work required of class members after the implementation of the RIF, and any active disciplinary action(s) received by the employee.
3. Actual or Potential Adverse Impact: In accordance with federal guidelines affecting equal employment opportunity and affirmative action, all decisions concerning reduction-in-force must be analyzed to determine their impact on agency utilization goals based on race and sex to avoid adverse impact in

violation of Section 4.d of the Uniform Guidelines on Employee Selection Procedures as applied to selection rates for separation through RIF.

4. Length of Service: Total state service determines length of service credit. In determining the length of service credit, an eligible veteran shall be accorded one year of state service for each year, or fraction thereof, of military service, up to a maximum of five (5) years of credit.

§ 4. Avoiding a RIF

A decision to implement a RIF must be reached only after the systematic consideration of actions designed to avoid the layoff. These actions may include but are not limited to the elimination of vacant positions; reduction in non-personnel related expenses; placement in a vacant position for which the employee qualifies; or retraining employees to facilitate placement in other positions at the agency or university.

§ 5. Office of Human Resources Responsibility

The responsibilities of the Office of State Human Resources (OSHR) shall include, but are not limited to the following:

1. Establishing the Reduction in Force (RIF) Plan Requirements and Program Guidelines to be followed by all agencies and universities to ensure commitment to, and accountability throughout, State Government;
2. Reviewing, approving and monitoring RIF plans and updates for agencies;
3. Providing technical assistance, training, oversight, monitoring, evaluation, and support to the RIF program; and
4. Developing, updating, and maintaining the RIF Priority Verification List database system.

§ 6. Agency or University Responsibility

The responsibilities of each Agency Head, Department Head and University Chancellor, or their designees, shall include:

1. Adhering to the RIF policy and programs that have been adopted by the State Human Resources Commission and approved by the Governor;
2. Agencies only: Submitting RIF plans and any necessary updates for approval by OSHR a minimum of one week prior to notifying employees of RIF actions; and

3. Universities only: Submit RIF plans and any necessary updates for approval by the President of the University System (or a Chancellor of a constituent institution, if delegated this power by the President of the University System) a minimum of one week prior to notifying employees of RIF actions. Submit approved RIF plans to OSHR for informational purposes within five (5) calendar days after approval.
4. Submitting employee information within 30 days of RIF notification to OSHR to maintain the RIF Priority Verification List.

§ 7. Notification Requirement

The employing agency or university shall notify the employee in writing as soon as possible and in any case no fewer than 30 calendar days prior to the effective date of separation. The written notification shall include the reasons for the reduction-in-force,

§ 8. Appeals

An employee separated through a reduction in force may appeal the separation only on the grounds listed in the applicable Employee Grievance Policy.

§ 9. Leave

Vacation Leave: Employees may request, subject to approval by management, to exhaust vacation leave and be paid in a lump sum for the balance not to exceed 240 hours. If an employee had over 240 hours of vacation leave at the time of their separation the excess leave shall be reinstated when reemployed within one year after separation.

Bonus Leave: Bonus leave will be paid in a lump sum if eligible.

Sick Leave: Employees separated due to reduction-in-force shall be informed that their sick leave shall be reinstated if employed in any agency or university within five years.

§ 10. Effective Date and Duration

This Policy is effective at the beginning of the day on October 7, 2021.

§ 11. History of this Policy

Date	Version
7-28-1949	First version

8-03-1973	Established procedure for lay-off and demotion to effect reduction in force in the Employment Security Commission.
1-25-1974	A permanent employee who is separated due to reduction in force shall have the right to appeal to the State Personnel Board for a review to assure that systematic procedures were applied equally and fairly.
1-01-1976	Includes provisions for competitive service positions and provides that all reductions in force be based on systematic consideration of time of appointment, length of service, relative efficiency.
3-01-1978	<p>If an employee with five years of service is either transferred to an exempt position or occupies one that is declared exempt, upon leaving that position for reasons other than just cause, such employee shall have priority to any position that becomes available for which the employee is qualified.</p> <p>A permanent employee, who has been or is scheduled to be separated due to reduction in force, shall have priority to any position that becomes available for which the employee is qualified.</p>
8-01-1978	Reduction in force – priority consideration defined.
8-01-1979	Severance pay equivalent to two weeks approved by 1979 GA.
3-04-1981	Emergency regulation on reduction in force.
6-01-1981	Revision in the wording of the policy to include “neither temporary, probationary nor trainee employees shall be retained in cases where permanent employees must be separated in the same or related classes.” AND that type of appointment, length of service and relative efficiency do not necessarily have to be considered in that order.
08-01-1981	Policy changes due to Governor and Legislature requesting reduction in work force.
10-01-1984	Amendments to AA Policy and RIF.
06-01-1985	Deleted competitive service provisions.
07-01-1985	Section on Appeals revised to conform to Legislation requiring years of service in certain pay grades before becoming a permanent employee.
02-01-1987	Agency responsibility clarified (1) guideline must be openly available for review (2) must inform employees in writing of reasons of RIF, eligibility for priority, appeal rights, and other benefits (3) must give two weeks notice.

	Affirmative Action changed to state all decisions must be analyzed to determine impact on departmental utilization goals and to avoid adverse.
08-01-1988	Reinstatement of sick leave changed to five years instead of three years.
11-01-1990	Leave Without Pay Option deleted since no longer needed.
4-01-1993	Priority Reemployment Consideration – revised to allow a new probation period in certain situations involving the reemployment of a person involved in reduction-in-force.
3-01-1994	Changed “permanent” to “career.”
4-01-1995	Note about veteran preference added for clarification.
12-1-1995	Revised to conform to reduction-in-force statutory provisions.
6-01-2008	Under the paragraph on Leave, added provision that leave in excess of 240 shall be reinstated if reemployed within one year. (This provision has been in the Reinstatement Policy since 2002. It is added here for clarity.) (2) Changed policy to allow an employee who is reduced in force to exhaust vacation leave after their last day of work and still be paid for up to 240 hours of leave in a lump sum.
1-01-2009	A decision of the N.C. Court of Appeals said that an issue regarding the manner in which a reduction in force is carried out is no longer considered a contested case issue; therefore, the paragraph on Appeals is changed to recognize the impact of that decision. (The rule will be changed to reflect this change also.)
3-01-2011	The paragraph on Appeals was changed (per Lynn Floyd) to include appeal if it is alleged that the separation is a denial of the veteran’s preference granted in connection with a reduction in force. (This change is simultaneous with the publication of the new Manual; therefore, no revision was sent out separately.)
12-01-2013	Section on “Appeals” changed to refer RIF employees to Employee Grievance Policy found in Section 7 of the HR Manual.
10-01-2014	<p>Changed trainee eligibility period from 6 months to 24 months to align with the legal definition of probationary period.</p> <p>Notification requirements were moved from “agency responsibility” and put in an independent section to place emphasis on the requirement.</p> <p>Removed the requirement for agencies to send applications of RIF employees to OSHR.</p>

	<p>Added a clarifying statement in the “leave” section that one year time period for reinstating excess leave is from the date of separation and not the date of notification of separation.</p>
2-06-2020	<p>Policy reviewed by the Diversity and Workforce Services Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. Reported to SHRC on February 6, 2020.</p> <p>North Carolina General Statute has been updated to reflect that no loss of funds shall be required as a precondition for a reduction in force (N.C.G.S. § 126-7.1 (b)). The policy revisions reflect this change, as well as adding some clarification regarding retention factors.</p>
10-07-2021	<p>Policy reviewed by the Diversity and Workforce Services Division to confirm alignment with current practices and by the Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. The RIF policy was modified to reflect changes included in HB602 that allows the UNC System to approve RIF Plans.</p>