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Public Personnel

The General Assembly's 2001 session saw few significant changes to North Carolina law affecting state and local government employees. Because of the unexpectedly large budget shortfall, the General Assembly limited state employee annual salary increases to an across-the-board \$625 and increased deductibles and co-payments under the Teachers' and State Employees' Comprehensive Major Medical Plan.

State Employees

Salary and Retirement Benefit Increases

Pursuant to S.L. 2001-424 (S 1005), the 2001 Appropriations Act, neither the Governor nor the Council of State will receive salary increases for either the 2001–2002 or 2002–2003 fiscal year. The Governor's annual salary will remain at \$118,430, while the annual salaries of the members of the Council of State will remain at \$104,523. Similarly, the General Assembly chose not to increase the salaries of appointed state department heads (which will all remain at \$102,119 annually), other executive branch officials, or judicial branch officials for fiscal years 2001–2002 and 2002–2003.

The General Assembly has increased by \$625 the annual salaries of most other state employees, including employees of the judicial branch, General Assembly, University of North Carolina, and Community College System, as well as all SPA state employees. In addition, the Appropriations Act provides a 2 percent cost-of-living retirement allowance increase for retirees in the Teachers' and State Employees' Retirement System (TSERS), the Judicial Retirement System, and the Legislative Retirement System and removes the cap on the amount of sick leave creditable to retirement under TSERS. It also adjusts the employer contribution rates for various state retirement programs. The 2001 Appropriations Act establishes an Optional Retirement Program for eligible employees of the Community College System and amends G.S. 135-58 to provide enhanced retirement benefits for employees of the judicial system. The General Assembly also removed limitations it had previously placed on Legislative Retirement System member benefits for participants who are also eligible for participation in, or are contributing to, any other state-authorized retirement system.

Finally, S.L. 2001-426 (H 1324) includes in the definition of employees eligible to participate in TSERS certain non-citizen visa holders, as required by U.S. Department of Labor regulations.

State Health Plan

As it does every year, the General Assembly appropriated money to both the Teachers' and State Employees' Comprehensive Major Medical Plan (the State Health Plan) and the Reserve for the State Health Plan. S.L. 2001-322 (S 34) appropriates \$36 million from the General Fund to the State Health Plan to be used to fund the plan's 2001–2002 fiscal year cash requirements. S.L. 2001-395 (S 61) appropriates \$114 million from the General Fund and \$7 million from the Highway Fund to the Reserve for the State Health Plan.

In response to budgetary constraints, the 2001 legislative session saw a number of changes to the benefits provided under the State Health Plan, the most significant of which was the increase in the amount of the deductible from \$250 to \$350 per person and from \$750 to \$1,050 per family. Although benefits under the State Health Plan continue to be payable on the basis of 80 percent by the plan and 20 percent by the employee, the maximum out-of-pocket payment required of employees enrolled in the plan has been increased from \$1,000 to \$1,500 per person per fiscal year, with a maximum of \$4,500 per employee/children or employee/family contract. In addition, S.L. 2001-253 (S 824) increases the co-payments for certain types of outpatient prescription drugs. Although the co-payment will remain \$10 for each generic prescription, the co-payment for each branded prescription will increase from \$15 to \$25, the co-payment for each branded prescription with a generic equivalent will increase from \$20 to \$35, and the co-payment for each branded or generic prescription not on the State Health Plan's formulary will increase from \$25 to \$40. No person covered under the State Health Plan will pay more than \$2,500 per year in prescription drug co-payments. Notwithstanding the increase in deductibles and co-payments, the General Assembly did increase the maximum lifetime benefit under the State Health Plan from \$2 million to \$5 million per person.

State Employee Federal Remedy Restoration Act

S.L. 2001-467 (H 898) adds new Article 31D, Section 143-300.35, to Chapter 143. The act waives the state's sovereign immunity for the limited purpose of allowing state employees to sue the state in state and federal court for violations of the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, and the Americans with Disabilities Act. The waiver does not apply to state employees who hold exempt policy-making positions pursuant to G.S. 126-5(d). S.L. 2001-467 also adds a new subsection (11) to G.S. 126.34.1(a) that includes claims of violations of the aforementioned federal statutes among the personnel actions or issues that may be the subject of a contested case before the Office of Administrative Hearings. The act limits the amount that an employee may recover from the state to the amount set forth in G.S. 143-299.2 (currently \$500,000) or the amounts authorized by the applicable federal statute, whichever is less.

State Employee Incentive Bonus Program

The 2001 Appropriations Act makes a number of changes to Article 36A of Chapter 143, which establishes the State Employee Incentive Bonus Program (SEIBP). In lieu of the term "employing unit," Article 36A now speaks of a "participating agency," which G.S. 143-345.20 now defines as

Any State department, agency, or institution, or any local school administrative unit that employs State employees eligible to participate in the State Employee Incentive Bonus Program. The term includes the North Carolina Community Colleges System, The University of North Carolina and its constituent institutions, and charter schools. The term does not include federal or local government agencies.

The 2001 Appropriations Act makes a number of other changes to the SEIBP, including the addition of a new requirement that the amount of savings generated by suggestions made and innovations adopted under the SEIBP not be determined until after the conclusion of a twelve-month implementation period. The General Assembly also provided for the establishment of a SEIBP reserve fund into which savings from Program suggestions are to be deposited and changed the allocation of incentive bonus funds. Twenty percent of the annualized savings/increased revenues realized by the adoption of an SEIBP suggestion will continue to be paid to the suggester as a form of gain-sharing, but where 30 percent of increased savings or revenues were previously divided among the entire group of employees in the participating agency work unit, that 30 percent will now be allocated as follows: 10 percent to the implementing agency for nonrecurring budget items, 10 percent to the Department of Administration for managing the SEIBP, and 10 percent to the Office of State Personnel's state employee training and education fund. The remaining 50 percent of the annual savings/increased revenues will continue to revert to the General Fund for nonrecurring budget items. S.L. 2001-424 also makes changes to the SEIBP suggestion and review process and to the roles of agency coordinator and agency evaluator.

Study of the State Personnel System

The Studies Act of 2001 [S.L. 2001-491 (S 166)] authorizes the Legislative Research Commission to study the State's overall system of personnel administration, including the funding and staffing of the Office of State Personnel, the comprehensive compensation system for state employees, state employee performance evaluation practices and procedures, and whether Chapter 126 of the General Statutes (the State Personnel Act) should be revised based upon recent developments in human resources practices. If the commission chooses to study the State's personnel system, it is to report its findings, together with any recommended legislation, to the 2002 Regular Session of the 2001 General Assembly or the 2003 General Assembly.

State and Local Government Employees

Employment Security Commission Records

S.L. 2001-115 (H 342) amends two sections of the General Statutes governing the retention and reproduction of records of the Employment Security Commission. The General Assembly amended G.S. 8-45.3 to provide specific authorization to the commission to photograph, photocopy, or micro-photocopy its records, and to make admissible in evidence such reproductions when certified by the commission as true and correct copies. G.S. 132-3 was amended to allow the commission to destroy an original record upon order of the Chairman of the Commission when the records have been copied. Records that have not been copied may be destroyed after three years.

Employment Security Law Changes

S.L. 2001-251 (H 343) makes several changes to North Carolina's employment security laws. Most notable is the removal of the sunset provisions of previous sessions' amendments to the employment security laws, specifically S.L. 1997-404, which amended G.S. 96-8(17) to redefine the base period for unemployment benefits and eliminated the one and one-half times test; and S.L. 1999-196, which eliminated the disqualification of individuals for unemployment benefits when the disqualification resulted from a discharge or failure to accept work that was due to the individual's inability to arrange for care of a child or elderly parent (defined by G.S. 96-8 as "undue family hardship").

S.L. 2001-251 makes additional changes to this section of Chapter 96. The definition of *undue family hardship* in G.S. 96-8(10a) now includes situations where the individual seeking

unemployment insurance benefits has been unable to accept a particular shift because of an inability to arrange for the care of a minor child. S.L. 2001-251 removes from G.S. 96-8(10a) the requirement that the minor child be under fourteen years of age. S.L. 2001-251 also adds disabled members of the immediate family to the group for which inability to arrange for care constitutes undue family hardship. In addition, the General Assembly added new subsection (27) to G.S. 96-8 to define *immediate family* as “an individual’s wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, step-, half-, or in-law relationship.”

Of particular interest to government employers who hire students or recent graduates who are seeking experience rather than permanent employment in government will be S.L. 2001-285 (H 334), which amends the definition of *employer* in G.S. 96-8(5) specifically to exclude state and local government employing units that hire interns.

Workers’ Compensation

In 2001 the General Assembly gave employers additional protections against unexpected and arbitrary cancellation of workers’ compensation insurance during the policy term. S.L. 2001-241 (S 468) adds two new sections to Article 36 of Chapter 58 of the General Statutes. New G.S. 58-36-105 prohibits workers’ compensation insurance carriers from canceling workers’ compensation policies before the expiration of the policy term except in certain enumerated instances. These instances include nonpayment of premiums, material misrepresentation or nondisclosure of a material fact in obtaining the policy, substantial breach of contract, increase in risk beyond that reasonably contemplated by the parties at the time the policy was issued, and fraudulent acts against the insurer by the employer. The act also specifies the notice required before an insurer can either refuse to renew a workers’ compensation insurance policy or lower coverage limits, raise deductibles, or raise premium rates.

In S.L. 2001-204 (S 299), the General Assembly also added a new category of employee to those for whom it requires coverage under the Workers’ Compensation Act: authorized pickup firefighters of the Division of Forest Resources of the Department of Environment and Natural Resources.

In addition, S.L. 2001-232 (S 466) amends G.S. 97-38 to increase the total amount of burial expenses compensable by an employer under the Workers’ Compensation Act from \$2,000 to \$3,500.

Local Government Employees

Exemption from the State Personnel Act for Employees of a Public Health Authority

S.L. 2001-92 (S 221) amends G.S. 130A-45.12 and G.S. 125-5 to exempt from the State Personnel Act employees of a public health authority created pursuant to G.S. 130A-45.02. This act does not change the status of employees of either county or district health departments, who remain subject to the State Personnel Act.

Defense of Soil and Water Employees

S.L. 2001-300 (H 968) amends G.S. 153A-97 to explicitly include soil and water conservation supervisors and local soil and water conservation employees among those for whom a county may provide a defense pursuant to G.S. 160A-167. The act also amends G.S. 160A-167 so that it explicitly includes soil and water conservation districts among those local government units authorized to provide a defense for, and/or pay a claim or civil judgment entered against, supervisors or employees in matters arising out of the scope of employment.

Job Protection for Precinct Election Officials

In S.L. 2001-169 (S 716), the General Assembly added a new section, G.S. 163-41.2, to Article 5 of Chapter 163, making it illegal for an employer to discharge or demote an employee because of his or her service as a precinct election official on Election Day.

Local Government Retirement

Local Government Employees' Retirement System (LGERS)

The 2001 Appropriations Act increases the retirement allowance paid to or on account of beneficiaries of LGERS by 1.7 percent and provides some additional, enhanced retirement benefits for local law enforcement officers. S.L. 2001-487 (H 338) removes the cap on the amount of sick leave creditable to retirement under LGERS. In addition, S.L. 2001-435 (H 943) authorized discontinued service retirement allowances for local government employees who are involuntarily terminated as a result of their employer's cessation of operations, dissolution, merger with or acquisition by an unrelated entity, or as a result of a reduction in force. Finally, as it did with TSERS, S.L. 2001-426 amends the definition of an employee eligible to participate in LGERS in order to bring the system in compliance with U.S. Department of Labor regulations.

Charlotte Firemen's Retirement System

S.L. 2001-22 (H 604) amends the act establishing the Charlotte Firemen's Retirement System in a number of ways, the most significant of which are the changes in the definitions of *compensation* and *final average salary*. This act also increases to 4 percent the annual compound interest rate applied to members' contribution balances.

Firemen's Supplemental Retirement Funds

In separate actions, the General Assembly repealed those statutes establishing the Morehead City Firemen's Supplemental Retirement Fund, the Marion Firemen's Supplemental Retirement Fund, the Cary Firemen's Supplemental Retirement Fund, the Gastonia Firemen's Supplemental Retirement Fund, and the Monroe Firemen's Supplemental Retirement Fund, and transferred any moneys remaining in the respective funds to the Board of Trustees of the Local Firemen's Relief Fund of the respective city. In addition, the General Assembly amended the Henderson Firemen's Supplemental Retirement Act to provide for equitable distribution of available funds among the retired members of the Henderson City Fire Department.

Public School Employees

S.L. 2001-173 (H 1149) amends G.S. 115C-335.5 by adding a new section authorizing local school boards to adopt a policy addressing the sexual harassment of school board employees by students, other employees, or school board members. S.L. 2001-118 (H 608) amended G.S. 115C-323 to change the requirements for public school employee health certificates. The General Assembly's 2001 legislation affecting public school employees is discussed in detail in Chapter 9, "Elementary and Secondary Education."

Local Legislation

S.L. 2001-20 (H 423) amends G.S. 160A-168(c), which deals with the confidentiality of personnel files of municipal employees, to add subsection (c)(8), applicable only to the City of Greensboro. The new subsection provides for the release, to the Human Relations Commission Complaint Subcommittee and to any person alleged to have been aggrieved by a police officer's actions, of both the disposition of disciplinary charges against the officer and the facts relied upon in reaching that disposition.

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