

# 20

## Public Employment

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In the area of public employment law, the 2006 session of the General Assembly was most notable for increasing the state minimum wage from \$5.15 per hour to \$6.15 per hour, effective January 1, 2007, and for increasing from five to twenty years the service requirement before state employees are eligible for state-paid retiree health benefits. In contrast to previous years, the General Assembly passed relatively little legislation affecting local government employees.

### **State Employees**

#### **Salary**

Pursuant to the Current Operations and Capital Improvements Appropriations Act of 2006, S.L. 2006-66 (S 1471), the Governor's annual salary will increase to \$130,629, while the annual salaries of the members of the council of state will increase to \$115,289. The salaries of appointed state department heads will increase to \$112,637. Other executive, legislative, and judicial branch officials also received salary increases.

The General Assembly also increased the salaries of all permanent, full-time State Personnel Act (SPA) employees by 5.5 percent. The salaries of all non-elected employees of the General Assembly were also increased by 5.5 percent.

Community college faculty and professional staff supported by state funds will receive a 6 percent salary increase, as well as a one-time 2 percent bonus. The appropriations act also raised the minimum salaries for each of the education-level categories of full-time community college faculty. All other community college employees supported by state funds will receive a salary increase of 5.5 percent.

For all University of North Carolina faculty and exempt (EPA) employees supported by state funds, the General Assembly authorized aggregate average increases of 6 percent. For teaching employees of the North Carolina School of Science and Mathematics, the General Assembly authorized aggregate average increases of 8 percent.

### **State Employee Retirement System Increases and Changes**

The appropriations act provided a 3 percent cost-of-living retirement allowance increase for retirees in the Teachers' and State Employees' Retirement System (TSERS), the Judicial Retirement System (JRS), and the Legislative Retirement System (LRS). It also adjusted the employer contribution rates for the various state retirement programs.

The appropriations act transferred the membership and retirement contributions of North Carolina Utilities Commission members serving on or after September 1, 2005, from TSERS to JRS.

The 2005 appropriations act amended G.S. 135-1(20), the definition of retirement as it applies to TSERS, to preclude TSERS members from rendering any services, whether on a part-time, temporary, substitute, or contractor basis, during the six months immediately following the member's effective date of retirement. The 2006 appropriations act extended the exemption for the University of North Carolina Phased Retirement Program until the earlier of June 30, 2010, or twelve months after the Internal Revenue Service issues phased retirement regulations.

In S.L. 2006-172 (H 853) the General Assembly amended G.S. 135-5 by adding new subsection (ooo) allowing University of North Carolina employees who participate in TSERS after participating in the Optional Retirement Program (ORP) to purchase creditable service for the period during which they worked for the University system while enrolled in ORP. Employees must complete five years of TSERS membership service before they may exercise this option.

### **State Law Enforcement Retirement**

S.L. 2006-141 (H 2651) amends G.S. 143-166.30(h) to allow state law enforcement officers to make Roth after-tax contributions to the Law Enforcement Officers Supplemental Retirement Income Plan. Such contributions and their earnings will not be transferable to TSERS, however.

### **State Disability Income Plan**

Under G.S. Chapter 135, Article 6 (Disability Income Plan), a member of TSERS or the Optional Retirement Program (ORP) who has been receiving short-term disability benefits may participate in a "trial rehabilitation," in which the member is given an opportunity to attempt to return to work and will not be required to undergo another waiting period before disability benefits resume if the attempt is unsuccessful. In S.L. 2006-74 (S 1738) the General Assembly amended G.S. 135-101(20) and G.S. 135-106 to provide for a similar trial rehabilitation period for a member who has been receiving long-term disability benefits. Under this act, an employee may return to service for a total period of up to thirty-six months without penalty, regardless of whether the inability to continue in service is due to the same incapacity or a different incapacity.

### **State Health Plan**

The most significant change to the Teachers' and State Employees' Comprehensive Major Medical Plan (the State Health Plan) was the increase in the number of years of service necessary before an employee becomes entitled to coverage under the State Health Plan in retirement. S.L. 2006-174 (S 837) amends G.S. 135-40.2 so that state employees and teachers (including local board of education employees and community college faculty) first hired on or after October 1, 2006, will be eligible to have their State Health Plan retiree premiums fully paid for by the state only if they have completed twenty years of service. For employees first hired before October 1, 2006, the eligibility requirement was five years of service. The act provides that the state will pay 50 percent of the State Health Plan retiree premium for employees first hired on or after October 1, 2006, who have completed only ten years of service at retirement.

In S.L. 2006-249 (H 1059) the General Assembly authorized the State Health Plan to cover over-the-counter medications as recommended by the plan's pharmacy and therapeutics committee and to adopt incentive programs encouraging plan members to adopt healthy lifestyles. This act

also amends G.S. 135-39.5B(b) to clarify that members electing any optional hospital and medical benefits programs offered under the auspices of the State Health Plan that do not include a pharmacy benefit will be covered by the State Health Plan pharmacy benefit.

In contrast to previous legislative sessions, the General Assembly made only one change to the procedures covered under the plan. S.L. 2006-249 amends G.S. 135-40.6A(b) by adding surgically implanted bone-anchored hearing aids to the list of procedures requiring prior medical approvals.

### **Immigration Status Verification of New Employees**

In S.L. 2006-259 (S 1523) the General Assembly enacted new G.S. 126-7.1(f) requiring that state agencies, departments, institutions, universities, community colleges, and local boards of education verify the citizenship or right-to-work status of each person hired after January 1, 2007, through the Basic Pilot Program of the United States Department of Homeland Security. It is not clear if the new requirement applies to the instructional and research staff of the University of North Carolina, employees of UNC Health Care, community college employees, and employees of local boards of education. These employees are exempt from Article 2 of G.S. Chapter 126, to which the new provision was added.

### **Career Banding of SPA Employees**

In Section 22.15A of S.L. 2006-66, the appropriations act, the General Assembly suspended any further implementation of career banding for SPA employees pending a review of the State Personnel Act by a legislative study commission. Career-banded classifications approved by the State Personnel Commission on or before June 15, 2006, may be continued with certain restrictions.

### **Exemption of Certain Department of Cultural Resources Employees from the State Personnel Act**

S.L. 2006-204 (H 2762) enacts new G.S. 143B-54 to exempt the following employees from certain enumerated provisions of the State Personnel Act:

- The director and associate directors of the North Carolina Museum of History
- Program chiefs and curators
- Regional history museum administrators and curators
- Members of the North Carolina Symphony
- The director, associate directors, and curators of Tryon Palace
- The director, associate directors, and curators of the Transportation Museum
- The director and associate directors of the North Carolina Arts Council
- The director, associate directors, and curators of the Division of State Historic Sites

### **Study Commissions on Issues Affecting State Employees**

In addition to authorizing the Legislative Research Commission to study certain more general state and local government employee issues, S.L. 2006-248 (H 1723), the Studies Act of 2006, created three study commissions focused on specific public employment issues: the House Select Study Commission on a Mandatory Cost-of-Living Increase for Retirees of the Teachers' and State Employees' Retirement System (Part X of the act); the Study Commission on State Disability Income Plan and Other Related Plans (Part XVII of the act); and the Compensation of State Elected and Appointed Officials Study Commission (Part XXII of the act). In addition, in Section 42 of the act, the General Assembly amended Section 5.1 of S.L. 2004-161 to extend the session by which the study commission on the State Personnel Act is to make an interim report

from the 2005 General Assembly to the 2006 General Assembly, and the session by which it is to make its final report, from the 2006 General Assembly to the 2007 General Assembly.

## **Local Government Employees**

### **Local Governmental Employees' Retirement System**

S.L. 2006-64 (H 1237) increases the membership of the Board of Trustees of the Local Governmental Employees' Retirement System (LGERS) by four; all four of the new members are to be members of local government. The act amends G.S. 128-28(c) to provide that the seven local government appointees to the board are to be chosen by the Governor in the following manner:

- One mayor or member of the governing board of a municipality participating in LGERS
- One county commissioner
- One local government law enforcement officer
- One county manager
- One city or town manager from a municipality participating in LGERS
- One current local government employee who is not exempt from the Fair Labor Standards Act
- One retired local government employee who during the period of employment was not exempt from the Fair Labor Standards Act

This act also amends G.S. 128-28(f) to require that a majority of affirmative votes in attendance at a meeting will be necessary for a decision to be made by the trustees.

### **Local Government Law Enforcement Retirement**

S.L. 2006-29 (H 447) amends G.S. 128-26(l), part of the act establishing the Local Governmental Employees' Retirement System (LGERS), to authorize local government law enforcement officers to purchase LGERS service credit for periods of employer-approved leaves of absence during which the officers are receiving workers' compensation benefits due to serious bodily injury incurred in the line of duty as a result of an intentional or unlawful act of another. The employer that granted the leave of absence will pay the employer percentage rate of contribution, and the employee's contribution is reduced by the amount paid by the employer. The act allows, but does not require, the employer to pay all or part of the employee cost of the service credit purchased.

In addition, S.L. 2006-141 (H 2651) amends G.S. 143-166.50(c) to allow local government law enforcement officers to make Roth after-tax contributions to the Law Enforcement Officers Supplemental Retirement Income Plan. Such contributions and their earnings will not be transferable to LGERS, however.

## **Other Employment Legislation**

### **Minimum Wage**

S.L. 2006-114 (H 2174) amends G.S. 95-25.3(a) to raise the minimum wage by one dollar to \$6.15 an hour, effective January 1, 2007.

### **Amendments to the Identity Theft Protection Act of 2005**

S.L. 2006-173 (H 1248) enacts a number of changes to those provisions of the Identity Theft Protection Act of 2005 that apply to state and local governments, but only one change affects public employee personnel records. Section 2 amends G.S. 132-1.10(b)(5) (part of the Public

Records Act) by clarifying that identifying information about a person is confidential and not a public record, but that a record that has had identifying information removed or redacted is a public record that must be disclosed to the public. Thus, a time sheet that contains a Social Security number or other protected or personally identifiable information about the employee may be disclosed after that confidential information is redacted.

### **Employment Security Commission Procedures**

S.L. 2006-242 (H 2885) amends G.S. 96-15(b)(2), which sets forth the procedure by which employers may protest a terminated employee's claims for unemployment benefits, in three ways. First, it shortens the time period by which an employer must protest an unemployment insurance claim by an employee from fifteen to ten days. Second, it requires that notice of the filing of a claim must be sent contemporaneously to the employer by fax, if a fax number is on file. Finally, it adds a requirement that an employer must receive both written notice of appeal rights and protest forms and that the forms must include a section referencing the rules and instructions for appeals.

### **North Carolina Occupational Health and Safety Act Penalties**

S.L. 2006-39 (H 126) amends G.S. 95-138(a) to provide that the commissioner of labor must assess a penalty of up to \$7,000 for a serious violation of the Occupational Health and Safety Act (OSHA) or for a violation of OSHA's posting requirements. Prior to this amendment, those penalties were discretionary. The act also adds a provision allowing for the discretionary assessment of penalties of up to \$7,000 for violations adjudged nonserious.

### **Public School Employees**

The General Assembly's 2006 legislation affecting public school employees is discussed in Chapter 10, "Elementary and Secondary Education."

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