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Public Personnel

The General Assembly's 1999 session produced few substantive changes to North Carolina laws affecting state and local government employees. Among the most notable developments were changes to the state's employment security laws, including a statutory amendment allowing individuals to receive unemployment benefits when they are unable to work because of their inability to arrange for care of a child or an elderly parent. Also of particular interest to state employees was the early approval of the budget bill containing their pay raises.

State Employees

Salary Increases

Pursuant to the 1999 Appropriations Act, S.L. 1999-237 (H 168), state employees received a 3 percent salary increase and a one-time bonus of \$125. Consistent with the requirements of the State Personnel Act, the actual allocation of the pay increase was a 2 percent career growth recognition award and a 1 percent cost-of-living adjustment. In accordance with G.S. 126-7(c)(4b), state employees on probation or final written warning were entitled to the cost-of-living increase. Although a bill was introduced in the House (H 923) to amend the State Personnel Act to provide that cost-of-living adjustments are not made to state employees involved in the final stage of the disciplinary procedure, it failed to pass. In addition to their pay increase, state employees enrolled in the state's major medical plan receive enhanced prescription drug benefits effective January 1, 2000.

S.L. 1999-237 also enacts a teacher salary schedule that increases salaries, on average, by 7.5 percent. Like state employees, school central office personnel and other noncertified personnel, such as teachers' assistants, received a more modest 3 percent increase, plus a one-time bonus of \$125.

The Governor and the Council of State also received salary increases. The Governor's salary rose from \$110,346 to \$113,656 annually. The annual salaries for Council of State members were increased from \$97,388 to \$100,310. Salaries of appointed state agency heads escalated from \$95,149 to \$98,003. Other executive branch officials also received raises of 3 percent, as did most

judicial branch officials, employees of the General Assembly, Community College system personnel, and EPA nonfaculty employees of The University of North Carolina.

In addition, Section 28.23(a) of the 1999 Appropriations Act amends G.S. 135-5 to provide a 2.3 percent retirement allowance increase for beneficiaries under the state retirement system.

Section 28.18(a) requires an adjustment to the salaries of wildlife enforcement officers so that the average salary in any salary classification level is the same as comparably classed members of the State Highway Patrol.

Firemen, rescue squad workers, and members of the National Guard are allowed to participate in benefits provided by the N.C. Teachers' and State Employees' Comprehensive Major Medical Plan pursuant to an amendment to G.S. 135-40. To participate these persons must not be eligible for any other type of comprehensive group health insurance and must have been without group health insurance for at least six months.

The Ambient Air Quality Improvement Act

Some of the most dramatic changes for state employees could come from an unexpected source, the Ambient Air Quality Improvement Act, S.L. 1999-328 (S 953). Designed to combat ozone pollution, the statute requires the Office of State Personnel, the Department of Administration, the Department of Transportation, and the Department of Environment and Natural Resources to jointly develop a plan to reduce vehicle miles traveled by state employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The Office of State Personnel is required to implement a policy that promotes telecommuting for state employees. The goal is to reduce state employee vehicle miles traveled by 20 percent without reducing total work hours or productivity. By October 1, 2000, the Office of State Personnel must report on its progress in developing and implementing these plans.

State Auditor's Access to Personnel Records

S.L. 1999-188 (S 885) amends G.S. 147-64.7 to clarify that the state auditor or his or her authorized representative has the authority to examine all personnel files of any state agency. Notwithstanding the law related to the privacy of personnel records, the auditor may make these records available to state and federal agencies in order to avoid unnecessary duplication of audit effort.

1999 Studies Provisions

More changes to the laws relating to governmental employees may be forthcoming in the General Assembly's "short" session, as S.L. 1999-395 (H 163) authorizes the Legislative Research Commission to study the following topics related to public personnel:

- defined contribution and pension plans for state employees and teachers,
- the administrative process for state employee grievances,
- a comprehensive compensation system for state employees, and
- state agencies' customer service quality assurance.

State and Local Government Employees

Employment Security Law Changes

S.L. 1999-340 (H 276) makes several meaningful changes to the employment security laws of North Carolina. First, it allows employers to pay their quarterly tax contributions by electronic funds transfer and permits the Employment Security Commission (ESC) to establish policies whereby taxes can be paid by credit card. This law also amends G.S. 96-9(a)(7) to require that,

beginning with the quarter ending September 30, 1999, all employers with 100 or more employees file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual employed. Previously only employers with 250 or more employees were required to submit this report.

S.L. 1999-340 restricts an individual's eligibility for extended benefits by amending G.S. 96-12.01(c) to provide that an employee is not eligible for extended compensation unless that person has had twenty weeks of full-time insured employment or the equivalent in insured wages. As a result of this change, eligibility for federally funded extended unemployment insurance benefits now matches the federal requirements for the program.

The law also amends G.S. 96-15(b)(2) to provide that, for claims filed on or after July 1, 1999, a decision by the adjudicator following an employee protest over benefits shall be considered the final decision of the commission if no written appeal is filed within fifteen days after the date of notification or mailing of the conclusion, whichever is earlier. Previously parties had ten working days to file a written appeal. Further, the law provides that an employer has fifteen days (previously ten working days) to protest claims filed by an employee against the employer's account. In addition it increases the time after which no issue may be raised about an employee's eligibility for benefits from twenty working days to forty-five days following the first day of the first week of claimed benefits.

Under the law, tax information that may be disclosed to the ESC for purposes of the N.C. Works study of the working poor pursuant to G.S. 105-259(b) has been expanded to include the following: (1) the social security number of the taxpayer's spouse, (2) information about the taxpayer's exemption and credit for children, and (3) information concerning the taxpayer's expenses for child and dependent care. Additionally G.S. 96-4(t)(1) is amended to protect the confidentiality of records, reports, and information obtained from units of government pursuant to the employment security laws.

Finally, S.L. 1999-340 amends G.S. 96-12(b)(4) to reduce the multiplier for the average weekly insured wage that an individual must be paid as qualifying wages for second-year benefits from ten to six and requires that the individual be paid wages in at least two quarters of the base period. As a result, individuals applying for a second year of benefits must now meet the same test of monetary eligibility as for their first year of benefits.

In an effort to make the employment security laws more "family friendly," the legislature also enacted S.L. 1999-196 (H 277). Effective July 1, 1999, and applicable to claims filed after that date, this law provides that an individual may not be disqualified for benefits when the person's inability to accept employment during a particular shift would result in an undue family hardship. Likewise an individual will not be disqualified for unemployment compensation if the person's discharge was due solely to an inability to work a certain shift because of an undue family hardship. The law defines *undue family hardship* as the inability to obtain care for a child under fourteen or an aged or disabled parent. In the event of eligibility, benefits will be non-charged against liable employers.

S.L. 1999-421 (H 278) encourages employers to hire Work First participants by amending G.S. 96-9(c)(2)(b) to provide that Work First recipients who must be separated by their employer within the first 100 days of employment because of their inability to do the work may be eligible for non-charged unemployment insurance benefits.

Pursuant to S.L. 1999-321 (H 275), employers with positive experience ratings will get a zero unemployment insurance tax rate. This legislation also temporarily reduces the unemployment insurance tax by 20 percent for most employers and substitutes an equivalent contribution to fund enhanced employment services and worker training programs.

Workers' Compensation

The General Assembly also modified the state's workers' compensation laws. Although some legislation was enacted merely to clarify existing law, other bills made substantive changes. S.L. 1999-418 (S 877) amends G.S. 97-2(2) to clarify that members of the North Carolina State and National Guard are considered employees and are subject to the workers' compensation act only

when on active duty under orders of the Governor. Members are entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under order of the Governor.

S.L. 1999-150 (SB 1113) deletes language from G.S. 97-25 requiring that the Industrial Commission adopt rules governing additional methods of oral and written communications between employers and medical care providers. This provision had been added to the law in response to an N.C. Court of Appeals decision [*Salaam v. N.C. Department of Transportation*, 122 N.C. App. 83, 468 S.E.2d 536 (1996)] that precludes the employer, the insurance carrier, and their attorney from engaging in ex parte communications with the injured employee's treating physician without the employee's consent.

When an employee suffers a compensable injury at the hands of a third-party tortfeasor, a subrogation lien is created for the employer and the workers' compensation insurance carrier against any recovery from the third party. S.L. 1999-194 (H 980) allows judges discretion in determining the subrogation amount of the employer's lien. The law amends G.S. 97-10.2(j) to provide that the judge shall determine the amount of the employer's lien based on either accrued or prospective workers' compensation benefits. In making this determination, the judge shall consider a number of factors, including the anticipated amount of workers' compensation and the employee's net recovery.

S.L. 1999-195 (H 991) rewrites G.S. 20-279.21(e) to provide that uninsured or underinsured motorist coverage need not insure against a loss for which benefits have been paid under workers' compensation laws, except an amount of an employer's lien determined under G.S. 97-10.2(h) or (j), but not to exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy.

S.L. 1999-158 (S 214) amends G.S. 128-26(1) to provide a means for measuring average final compensation for members of the Teachers' and State Employees' Retirement System and the Local Government Retirement System who purchase creditable service for leaves of absence incurred while receiving workers' compensation payments. When the service purchased is for a period during the four consecutive calendar years that would have produced the highest average annual compensation, the compensation that the individual would have received during the purchased period shall be included in calculating the members' average final compensation.

No action was taken on a bill (S 1166) that proposed to include wages earned in employment other than that in which the employee was injured in the calculation of the average weekly wage. Had this bill passed, the exposure of employers and insurance carriers could have substantially increased.

Workplace Ergonomics Standards

Whether the Occupational Safety and Health Division of the N.C. Department of Labor (NC OSH) could implement and begin enforcement of a workplace ergonomics standard was a hotly contested issue. Ultimately, the legislature included a provision in the studies bill, S.L. 1999-395 (H 163), that precludes NC OSH from implementing and enforcing (but not developing) a workplace ergonomics standard until June/July 2001. The provision also calls for a study of the causes, frequency, costs, and prevention of occupational musculoskeletal disorders. However, prior to the bill's enactment, NC OSH signed and filed with the state's Rules Review Commission the final version of the proposed ergonomics standard that states that it will have an effective date of January 2001. It is likely this issue will be revisited by the legislature during its short session.

Occupational Safety and Health Administration (OSHA) Witness Statements

S.L. 1999-364 (S 370) provides that an employer cited for Occupational Safety and Health Administration (OSHA) violations is entitled to receive a copy of the official inspection report that is the basis for the citations. The law also amends G.S. 95-136(e1) to prevent the disclosure of the

names of witnesses or complainants to the employer and requires that the names be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements in the handwriting of the witness or complainant shall, upon request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. The Commissioner of Labor is required to make available to the employer ten days prior to a scheduled enforcement hearing unredacted copies of the witness statements the commissioner intends to use at the hearing or the statements of witnesses the commissioner intends to call, provided a written request is received no later than twelve days prior to the hearing. If the request is not timely, the statement shall be made available as soon as is practicable.

Attempt to Standardize Law Enforcement Discipline

A bill that would have standardized the discipline of all law enforcement officers was also introduced in the Senate (S 558) but failed to make the crossover deadline of April 29, 1999. This bill attempted to standardize law enforcement discipline across agencies and units of government by providing that no officer can be discharged, suspended, or demoted for disciplinary reasons without just cause. Each agency or department employing law enforcement officers would have been required to establish due process for disciplinary action.

Public School Employees

In S.L. 1999-96 (S 898) the legislature modified the appeal process for public school teachers in a number of ways. First, a school board now has up to ten days (previously five) to hold a teacher dismissal hearing. The law also amends G.S. 115C-325(j)(3) to make it clear that the superintendent may have his or her designee present at the case manager hearing. The superintendent is required to provide the employee with a list of witnesses at least eight (was ten) days before the hearing. Additionally G.S. 115C-325(j1)(1) was amended to require the superintendent to request a transcript from the case manager hearing and, within two days of receipt of the same, to submit a written recommendation regarding the teacher's fate to the school board.

S.L. 1999-300 (S 742) amended Article 26 of Chapter 14 of the General Statutes to make it a felony for certain school personnel, including volunteers, to take indecent liberties with a student.

In addition to the safeguards provided by Title VII of the Civil Rights Act, employees who file written complaints regarding sexual harassment by students, fellow employees, or school board members are protected from retaliation by a new part added to Chapter 115C of the General Statutes pursuant to S.L. 1999-352 (H 1267). Notwithstanding this provision, if the complaining employee knows or has reason to believe that the allegations of sexual harassment are false, he or she may be the subject of disciplinary action.

Certain state employees and public school employees may finally be able to share leave. S.L. 1999-170 (S 756) requires the State Personnel Commission and the State Board of Education to adopt rules to allow a state employee to share leave voluntarily with an immediate family member who is a public school employee and vice versa.

These laws are discussed in detail in Chapter 9 (Elementary and Secondary Education).

Local Government Employees

Asheville Civil Service Board

S.L. 1999-303 (S 532) rewrites the laws related to the Asheville Civil Service Board to require the city manager to consult with representative employees in the police and fire

departments to establish criteria for filling positions and to give the board the authority to approve the criteria. The law also requires that the grievance procedure for an employee who is discharged, suspended, reduced in rank, transferred against his or her will, or denied a promotion or pay raise be concluded within thirty days. If it is not, the employee may file a request for a hearing before the Civil Service Board.

Hickory Firefighters' Supplemental Retirement Fund

S.L. 1999-128 (S 687) amends the supplemental retirement fund for firefighters in the city of Hickory to restrict eligibility to full-time paid firefighters retiring on or after March 1, 1999. Previously both full- and part-time firefighters with the requisite length of service were entitled to the pension.

Charlotte Firefighters' Retirement

S.L. 1999-1000 (S 583) modified several provisions of the Charlotte Firefighters' Retirement System, which provides retirement, disability, and survivor benefits for uniformed employees of the Charlotte Fire Department. Among other things the law amends sections of the plan dealing with the reinstatement credit after a former firefighter returns to the system and relating to the purchase of credit for prior military service. Additionally the law makes changes to provisions regarding benefits paid under the system and administration of the system by the Board of Trustees.

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