

CHAPTER 126: THE 2013 CHANGES
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Statutory changes effective 8-21-2013

NO CHANGE

- Career status remains at 24 consecutive months
- Appeal to OAH remains within 30 days of receipt of final agency decision.
- SHRC not part of grievance review.
- OAH decision continues to be final and binding, regardless of issue.
- OAH continues to lack jurisdiction over any matter not specifically set out as a basis for an appeal in Chapter 126.

Chapter 126

SMALL CHANGES

THE NAMES

- OSP is now OSHR
- SPC is now SHRC
- State Personnel Act (Ch. 126) is now State Human Resources Act

COMPOSITION OF SHRC

- House & Senate – 1 lawyer each
- House & Senate - 1 member each private industry – knowledge of HRM
- Gov – State employee/veteran - supervisory
- Gov – State employee employee non-exempt
- Gov – Local gov't employee supervisory & local gov't employee non-exempt
- Gov – at large (general public)

Career Status, Probationary Period, Grievances

BIG CHANGES

PROBATIONARY PERIOD

- Adds definition of probationary employee - now 24 months (anything less than career status is probationary)
- Eliminates “twilight zone”

GRIEVANCE PROCEDURES

- OSHR now reviews/approves every State agency/university final agency decision.
- But not the internal grievance decisions of local gov’t agencies.
- OSHR has determined that this provision does not apply to local governments. Right now.

APPEAL TO OAH

- Direct appeal to OAH eliminated, no more bypassing agency grievance procedure, for any reason.
- Appeals based on alleged violations of FMLA, FLSA, ADEA or ADAAA have been eliminated.
- “Unlawful workplace harassment” as an issue has been deleted. Language re: “quid pro quo” and “hostile work environment” eliminated.

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APPEAL TO OAH

- “Creed” has been eliminated as a basis for an allegation of discrimination.
- “Genetic information” has been added as a basis for an allegation of discrimination.

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APPEAL TO OAH

- “Handicapping condition” and the reference to Chapter 168A have been replaced by “disability.”
- No longer any grievance rights for any issue on RIF.

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NEW SET OF APPEALABLE ISSUES FOR OAH

- Discrimination/harassment in “application/terms & conditions/termination” of employment;
- Retaliation in “application/terms & conditions/termination” of employment;
- Lack of just cause in dismissal, demotion or suspension (What is this?)

NEW SET OF APPEALABLE ISSUES FOR OAH

- Failure to award veterans preference - no definition of this preference in 25 NCAC 11. Only a requirement that persons claiming preference must state on application.
- Failure to post or give priority consideration; **not applicable to local government agencies;**

NEW SET OF APPEALABLE ISSUES FOR OAH

- Whistleblower allegations (Is this applicable to local gov’t SHRA employees?)
- Involuntary separation due to unavailability. Agency’s burden only to prove employee was unavailable.

TIME LIMITS – APPEALS FROM OAH

- OAH has only 180 days to make decision after case “commenced”
- Appeal from OAH decision now to Court of Appeals. Appeal must be filed within 30 days from receipt of final decision.
- No more appeal to Superior Court

Substantial Equivalency – What Is It?

- Flexibility to use county policies instead of SHRC policies
- No need for OSHR review and approval
- Requires a commitment of resources
- May require changes to county policies
- A way to operate under Chapter 126 without OSHR and SHRC review and approval

Substantial Equivalency

- Available only to counties
- Apply to OSHR, approved by SHRC
- Potentially available in:
 1. Recruitment/Selection
 2. Class & Comp
 3. EEO
 4. Training
 5. Political Activity
 6. Employee Relations

OUTSTANDING QUESTIONS

- What are the effects of a 24 month probationary period?
- Does the 90 day time limit for processing grievances apply to local gov't SPA appeals? And what if it does?
- Do the Whistleblower provisions apply to local gov't SHRA employees?

OUTSTANDING QUESTIONS

- Non-disciplinary dismissal, demotion or suspension - not a contested case issue – what is this?
- What does “commenced” mean in OAH time limit?
