

SECTION .1700 - LOCAL GOVERNMENT EMPLOYMENT POLICIES

25 NCAC 011.1701 APPLICABILITY

State law (N.C.G.S. Chapter 126, "The State Human Resources Act") provides for the establishment of a system of personnel administration applicable to certain local employees paid entirely or in part from federal funds. Local governing boards are authorized by G.S. 126 to establish personnel systems which will fully comply with the applicable federal standards and then may remove such employees from the state system to their own system.

*History Note: Authority G.S. 126-1; 126-11;
 Eff. August 3, 1992.*

25 NCAC 011.2002 TYPES OF APPOINTMENTS AND DURATION

(a) Probationary Appointment: The probationary period is an essential extension of the selection process and provides the time for effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards. Probationary appointments are administered as follows:

- (1) The agency shall require a probationary period for:
 - (A) Individuals receiving original appointments to permanent positions;
 - (B) Employees accepting a position in a different agency in the same county or in another county that is subject to G.S. Chapter 126. This applies to those who have already achieved career status; and
 - (C) Individuals being rehired following a 31 day break in service may be required to serve a probationary period as set out in Subparagraph (2).
- (2) Individuals being rehired may be required to serve a probationary period if:
 - (A) the essential duties and responsibilities of the position into which the employee is being rehired are significantly different from those of the position held at the time the employee left; or
 - (B) in the judgment of the employing agency, a new probationary period is justified based on previous employment history and the specific reasons for the new probationary period are communicated to the employee in the job offer.
- (3) Employees with career status who serve a new probationary period as set out in Part (a)(1)(B) of this Rule shall be returned to career status upon successful completion of the new probationary period;
- (4) The length of the probationary period shall not be less than three nor more than nine months of either full-time or part-time employment. The length is dependant upon the complexity of the position and the rapidity of progress made by the particular individual in the position. If the desired level of performance is not achieved within nine months after appointment, the employee shall be separated from service unless in trainee status; an employee with a trainee appointment is expected to make a satisfactory progress, but is not permanent until he has completed the training period;
- (5) At any time during a probationary period an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. The employee must be given notice of dismissal, including reasons; and
- (6) Employment in a temporary appointment may be credited toward the probationary period at the discretion of the appointing authority. Employment in an intermittent or emergency appointment shall not be credited toward the probationary period.

(b) Trainee Appointment: A trainee appointment may be made to a position in any class for which the specification includes special provisions for a trainee progression leading to a regular appointment. Trainee appointments are administered as follows:

- (1) An individual who possesses the acceptable training and experience for the class may not be appointed as a trainee;
- (2) The specification for each class in which a trainee appointment is authorized will define the minimum qualifications for the trainee appointment and the minimum qualifications for a regular probationary appointment. It is expected that the individual will progress through supervised experience to a minimum level of satisfactory performance in the position during a period of time indicated by the difference between the amounts of experience required for the two types of appointments. This limit does not include time spent on educational leave or additional time required to participate in a work-study program designed to meet educational requirements for the class. An employee may not remain on a trainee appointment beyond the time he meets the educational and experience requirements for the class. After the employee has successfully completed all educational and experience requirements he shall be given probationary or permanent status in the position or shall be separated. If the period of the trainee appointment equals or exceeds nine months, the employee must be given permanent status or be separated at the completion of the trainee period;
- (3) If an employee with permanent status in another class accepts a trainee appointment, the permanent status will be waived for the duration of the trainee appointment. The employee can regain permanent status either through successful completion of the trainee appointment, by reinstatement to the class in which he previously held status, or by transfer to a position in a class for which he/she would have been eligible based on previous permanent status; and

- (4) A former employee who does not meet the minimum requirements of the class to which he is being appointed shall be given a trainee appointment. All requirements for the trainee appointment must be satisfied prior to attaining permanent status.
- (c) **Permanent Appointment.** A permanent appointment is an appointment to a permanently established position when the incumbent is expected to be retained on a permanent basis. Permanent appointments follow the satisfactory completion of a probationary or trainee appointment, or may be made upon reinstatement of a qualified employee. Permanent appointments do not confer career status. Career status is achieved only when the conditions set out in GS 126-1.1 are met. Continuous service creditable toward career status shall be transferred when an employee accepts a position in an agency subject to the State Human Resources Act in the same county or in another county.
- (d) **Time-Limited Appointment.** A time-limited appointment may be made to:
 - (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less; or
 - (2) to a permanent position that has an established duration of no more than two years. Such appointment shall not be made for less than six months. If at the end of the two year time-limited appointment, the work is expected to continue and the position becomes permanent, the employee shall be given a permanent appointment. A time-limited appointment is distinguished from a temporary appointment by the greater length of time, and from the regular permanent appointment by its limited duration.
- (e) **Temporary Appointment.** A temporary appointment may be made to a permanent or temporary position. The appointment shall be limited to a maximum duration of 12 months.
- (f) **Pre-Vocational Student Appointment.** This appointment is to be used to enable students to gain practical knowledge of their particular occupational area of interest. A suitable plan for training under close supervision must be developed for the individual. In the case of a co-operative, work study, internship, or similar appointment, the time schedule for work must be determined. The basis of eligibility and selection for such an appointment shall be outlined in a formal plan developed by the participating agencies for each type and level of student involvement. Upon successful completion of their training, individuals may be considered for any vacant position for which qualified.
- (g) **Emergency Appointment:** An emergency appointment may be made when an emergency situation exists requiring the services of an employee before it is possible to identify a qualified applicant through the regular selection process. Emergency appointments are administered as follows:
 - (1) When it is determined that an emergency appointment is necessary, all other requirements for appointments will be waived;
 - (2) An emergency appointment may be made for a period of up to 60 work days (consecutive or non-consecutive), or a total of 480 hours; and in pay status.
 - (3) Any one individual may not receive successive emergency appointments with the same department or agency. At least three calendar months must elapse after the conclusion of the emergency appointment before that department or agency can give the same individual another emergency appointment.
- (h) **Appointment of Incumbents in Newly-Covered Programs:**
 - (1) Upon extension of State Human Resources Act requirements to a program, position, or group of positions, the incumbent(s) may be appointed with permanent status in his classifications under any of the following circumstances:
 - (A) The employee is qualified for reinstatement on the basis of previous permanent status in a comparable position; or
 - (B) The employee has at least three months of satisfactory service in the program or agency, as certified by the appointing authority, and the appointing authority recommends that the employee be granted permanent status;
 - (2) If the agency fails to grant permanent status within nine months from the initial coverage then the incumbent must be terminated. Employees given trainee appointments will be given permanent status consistent with other trainee appointments; and
 - (3) Incumbents who have less than three months of service with the agency shall be continued with no status until they are granted permanent status or terminated as required in this Rule. Employees with more than three months but less than nine months services in the agency may be continued without status until nine months have elapsed. At the end of nine months, however, the incumbent must be granted permanent status or terminated.

(i) **Work-Against Appointment.** When qualified applicants are unavailable and there is no trainee provision for the classification of the vacancy, the appointing authority may appoint an employee below the level of the regular classification in a work-against situation. A work-against appointment is for the purpose of allowing the employee to gain the qualifications needed for the full class through on-the-job experience. The appointee must meet the minimum training and experience standard of the class to which initially appointed. A work-against appointment may not be made when applicants are available who meet the training and experience requirements for the full class, and for the position in question.

*History Note: Authority G.S. 126-4.
Eff. August 3, 1992;
Amended Eff. May 1, 2009.*

25 NCAC 011.2003 PROMOTION

- (a) A promotion is a change to a classification at a higher level. This may result from movement to another position or by the present position being reallocated to a higher classification as a result of increases in the level of duties and responsibilities.
- (b) When it is feasible, a vacancy should be filled by promotion of a qualified permanent employee. Selection should be based upon demonstrated capacity, and quality of services. If promotion results from movement to another position, the candidate must possess the minimum training and experience for the class. If the promotion results from the present position being reallocated to a higher classification, the employee may be promoted by waiver of the stated training and experience requirements if he has satisfactorily performed for a minimum of three months prior to the reallocation.
- (c) An employee in a work-against appointment cannot be promoted, upon reallocation of his position, by waiver of training and experience requirements until he has served at least one year in the work-against class or until qualified for the new class. The incumbent in a work-against situation must be promoted as soon as he meets the qualifications for the higher class or the position must be reallocated to the lower class.
- (d) An employee in probationary or trainee status may be promoted to another position in a higher classification if the person is qualified for such an appointment. The employee's probationary period will continue until performance meets the required standard, as certified by the appointing authority, except that in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status).
- (e) An employee in probationary status occupying a position at the time it is reallocated upward may be promoted to the new class if the person possesses the minimum training and experience requirements; if not qualified the employee shall remain at the former level working against the higher classification or be separated. If promoted during the probationary period, the employee will continue in probationary status until performance meets the required standard, but in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status).

*History Note: Authority G.S. 126-4;
 Eff. August 3, 1992.*

25 NCAC 011.2004 DEMOTION OR REASSIGNMENT

Demotion or reassignment is a change in status resulting from assignment of a position to a lower classification level. It may result from the choice of the employee, reallocation of a position, inefficiency in performance, unacceptable conduct, reduction-in-force, or better utilization of individual resources. If the change results from inefficiency in performance or as a disciplinary action, the action is considered a demotion. If the change results from a mutually agreed upon arrangement, the action is considered a reassignment. When an employee in permanent, probationary or trainee status is demoted, it is expected that he will possess the minimum qualifications required for the new class at the respective level of appointment.

*History Note: Authority G.S. 126-4;
 Eff. August 3, 1992.*

25 NCAC 011.2005 SEPARATION

Separation occurs when an employee leaves the payroll for reasons indicated in this Rule or because of death. Employees who have acquired permanent status are not subject to involuntary separation or suspension except for cause or reduction-in-force. The following are types of separation:

- (1) Resignation or Retirement. An employee may terminate his services with the agency by submitting a resignation or request for retirement to the appointing authority at least two weeks prior to his last day of work;
- (2) Dismissal. Dismissal is involuntary separation for cause, and shall be made in accordance with the provisions of 25 NCAC 011.2300 Disciplinary Action: Suspension, Dismissal and Appeals;
- (3) Reduction-in-Force. For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No permanent employee shall be separated while there are emergency, intermittent, temporary, probationary, or trainee employees in their first six months of the trainee progression serving in the same or related class, unless the permanent employee is not willing to transfer to the position held by the non-permanent employee, or the permanent employee does not have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee. A permanent employee who was separated by reduction-in-force may be reinstated at any time in the future that suitable employment becomes available. The employer may choose to offer employment with a probationary appointment. The employee must meet the current minimum education and experience standard for the class to which he is being appointed;
- (4) Voluntary Resignation Without Notice. An employee who is absent from work and does not contact the employer for three consecutive workdays may be separated from employment as a voluntary resignation. Such separations create no right of grievance or appeal pursuant to the State Human Resources Act (G.S. Chapter 126). A factor to be considered when determining whether the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact his or her employer; and
- (5) Separation Due to Unavailability When Leave is Exhausted. An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay. Prior to separation the employing agency shall notify the employee in writing of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful.
- (6) Definitions:
 - (a) Unavailability is defined as the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; and
 - (b) Applicable leave credits is defined as the sick, vacation and bonus leave the employee chose to exhaust prior to going on leave without pay.

*History Note: Authority G.S. 126-4;
Eff. August 3, 1992;
Amended Eff. January 1, 2007; September 1, 2004; December 1, 1994.*

SECTION .2300 - DISCIPLINARY ACTION: SUSPENSION, DISMISSAL AND APPEALS

25 NCAC 01I .2301 JUST CAUSE FOR DISCIPLINARY ACTION

(a) Any employee, regardless of occupation, position, or profession may be warned, demoted, suspended or dismissed by the appointing authority. Such actions may be taken against employees with career status as defined in G.S. 126-1.1 only for just cause. The degree and type of action taken shall be based upon the judgment of the appointing authority in accordance with the provisions of this Rule. When just cause exists the only disciplinary actions provided for under this Section are:

- (1) Written warning;
- (2) Disciplinary suspension without pay;
- (3) Demotion; and
- (4) Dismissal.

(b) At any time during the period prior to achieving career status, including during the probationary period, an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. The employee must be given notice of dismissal, including reasons. Such notice may be, but is not required to be, in writing.

(c) There are two bases for the discipline or dismissal of employees under the statutory standard of "just cause" as set out in 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 conduct.

(d) Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct, as defined in 25 NCAC 01I .2302(a); .2303(a); and .2304(b), constitutes just cause for discipline or dismissal. 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.

(e) The imposition of any disciplinary action shall comply with the procedural requirements of this Section.

History Note: Authority G.S. 126-4; 126-35;
Eff. August 3, 1992;
Amended Eff. June 1, 2008; December 1, 1995; August 2, 1993.

25 NCAC 011.2302 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES

- (a) Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or agency.
- (b) The intent of this Section is to assist and promote improved employee performance, rather than to punish. This Rule covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.
- (c) In order to be dismissed for a current incident of unsatisfactory job performance, an employee must first receive at least two prior disciplinary actions: First, one or more written warnings, followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.
- (d) Prior to the decision to dismiss an employee, the agency director or designated management representative must conduct a pre-dismissal conference with the employee in accordance with the procedural requirements of the Section.
- (e) An employee who is dismissed must receive written notice of the specific reasons for the dismissal as well as notice of any applicable appeal rights.
- (f) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-dismissal conference constitute procedural violations with remedies as provided for in 25NCAC 01B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

*History Note: Authority G.S. 126-4; 126-35;
Eff. August 3, 1992;
Amended Eff. April 1, 2001; December 1, 1995.*

25 NCAC 011.2303 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE

(a) Gross Inefficiency (Grossly Inefficient Job Performance) occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency and that failure results in:

- (1) the creation of the potential for death or serious harm to a client(s), an employee(s), members of the public or to a person(s) over whom the employee has responsibility; or
- (2) the loss of or damage to agency property or funds that result in a serious impact on the agency or work unit.

(b) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(c) Prior to dismissal of an employee with permanent status on the basis of grossly inefficient job performance, there shall be a pre-dismissal conference between the employee and the agency director or designated management representative. This conference shall be held in accordance with the provisions of 25 NCAC 011.2308.

(d) Dismissal for grossly inefficient job performance requires written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-dismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 01B .0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

*History Note: Authority G.S. 126-4(7a);
 Eff. August 3, 1992;
 Amended Eff. April 1, 2001; December 1, 1995.*

25 NCAC 011.2305 WRITTEN WARNING

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and acceptable standards of personal conduct. All types of performance-related job inadequacies may constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related or non-work-related conduct and may be intentional or unintentional. 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 must receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning must:

- (1) Inform the employee that this 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, must be made to address these specific issues;
- (4) Tell the employee the time frame allowed for making the required improvements/corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance. Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct;
- (5) Tell the employee the consequences of failing to make the required improvements/corrections.

(b) A written warning must be issued in accordance with the procedural requirements of this Section, including any applicable appeal rights.

*History Note: Authority G.S. 126-4;
Eff. August 3, 1992;
Amended Eff. December 1, 1995.*

25 NCAC 011.2306 DISCIPLINARY SUSPENSION WITHOUT PAY

(a) 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. 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 day, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without pay the agency director or designated management representative shall conduct a pre-suspension conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

(b) An agency may impose the same periods of disciplinary suspension without pay for all employees as long as the period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

*History Note: Authority G.S. 126-4(6); 126-35;
 Eff. August 3, 1992;
 Amended Eff. April 1, 2001; December 1, 1995.*

25 NCAC 011.2307 DEMOTION

- (a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.
- (b) Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.
- (c) Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.
- (d) Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.
- (e) An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.
- (f) Disciplinary demotions may be accomplished in three ways:
 - (1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary range for the new lower pay grade;
 - (2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary range for the new lower pay grade; or
 - (3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade or the special entry rate, if in effect.
- (g) Prior to the decision to demote an employee for disciplinary reasons, the agency director or designated management representative must conduct a pre-demotion conference with the employee in accordance with the procedural requirements of this Section.

*History Note: Authority G.S. 126-4;
Eff. August 3, 1992;
Amended Eff. April 1, 2001; December 1, 1995.*

25 NCAC 011.2308 PROCEDURAL REQUIREMENTS

The following procedural requirements must be followed to issue disciplinary action under this Section:

- (1) **WRITTEN WARNING**-to issue a written warning to an employee a supervisor must issue the employee a written warning, detailing the matters referenced in 25 NCAC 011 .2305, and including any applicable appeal rights.
- (2) **DISCIPLINARY SUSPENSION WITHOUT PAY**-to place an employee on disciplinary suspension without pay, the agency director or designated management representative must comply with the following procedural requirements:
 - (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action. In matters of grossly inefficient job performance or unacceptable personal conduct no prior disciplinary actions are required so an employee may be suspended without pay for a current incident of grossly inefficient job performance or unacceptable personal conduct;
 - (b) Schedule and conduct a pre-suspension conference. Advance oral or written notice of the disciplinary conference must be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (c) Furnish the employee a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension;
 - (d) Advise the employee of any applicable appeal rights in the document affecting the suspension.
- (3) **DEMOTION** – to demote an employee the agency director or designated management representative must comply with the following procedural requirements:
 - (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action;
 - (b) In matters of grossly inefficient job performance or unacceptable personal conduct, there is no requirement for previous disciplinary action, so an employee may be demoted for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary action;
 - (c) Give an advance oral or written notice of the pre-disciplinary conference to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (d) Give an employee who is demoted written notice of the specific acts or omissions that are the reasons for the demotion;
 - (e) Advise the employee of how and to what extent the demotion will affect the employee's salary rate or pay grade; and
 - (f) Advise the employee of any applicable appeal rights in the document affecting the demotion.
- (4) **DISMISSAL**-Before an employee may be dismissed, an agency must comply with the following procedural requirements:
 - (a) The supervisor recommending dismissal shall discuss the recommendation with the agency director or designated management representative who shall conduct a pre-dismissal conference with the employee. The person conducting the pre-dismissal conference must have the authority to decide what, if any, disciplinary action shall be imposed on the employee.
 - (b) The supervisor or designated management representative shall schedule a pre-dismissal conference with the employee.
 - (c) Give an advance oral or written notice of the pre-disciplinary conference to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances.
 - (d) The agency director or designated management representative shall conduct a pre-dismissal conference with the employee, limiting attendance to the employee and the person conducting the conference; a second management representative may be present at management's discretion. The purpose of the pre-dismissal conference is to review the recommendation for dismissal with the affected employee and to listen to and to consider any

information put forth by the employee, in order to insure that a dismissal decision is sound and not based on misinformation or mistake. Security personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorney representing either side may attend the conference.

- (e) In the conference, management shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal action and to offer information or arguments in support of the employee's position. Every effort shall be made by management to assure that the employee has a full opportunity during the conference to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity does not include the option to present witnesses.
- (f) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss shall not be communicated to the employee in accordance with the Sub-item, prior to the beginning of the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the completion of the pre-dismissal conference.
- (g) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. An employee with permanent status who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks working notice of his dismissal. Instead of providing up to two weeks working notice and at the discretion of management an employee may be given up to two weeks pay in lieu of 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 shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal.

*History Note: Authority G.S. 126-35; 126-36; 126-38; 150B, Article 3; 150B-23;
Eff. August 3, 1992;
Amended Eff. April 1, 2001; December 1, 1995.*

25 NCAC 011.2309 SPECIAL PROVISIONS

(a) **GRANDFATHER PROVISIONS** - The following Grandfather provisions establish the force and effect of disciplinary actions in existence on December 1, 1995.

- (1) Oral warnings - any oral warning existing on December 1, 1995 is deemed void and has no further force or effect upon the disciplinary status of any employee.
- (2) All other disciplinary actions existing on December 1, 1995 shall remain in full force and effect as if the warnings or other disciplinary actions had been imposed under this Section. No written warning or other disciplinary action imposed prior to December 1, 1995 shall be deemed inactive by operation of the provisions of this Section until more than 18 months after December 1, 1995 or until the disciplinary action is deemed inactive in accordance with 25 NCAC II .2309(b), whichever occurs first.
- (3) **Extension of Disciplinary Actions** - any written warning or disciplinary action imposed prior to December 1, 1995 may be extended in accordance with the provision of this Section as if the warning or disciplinary action had been imposed after December 1, 1995. No unresolved written warning or disciplinary action issued prior to December 1, 1995 shall become inactive if within 18 months of December 1, 1995, another disciplinary action or warning is imposed on the employee. Notice of the extension of the active status of a disciplinary action may be given at any time within 18 months of the effective date of the disciplinary action.
- (4) **Resolution of disciplinary actions under prior agency** - any warning or disciplinary action existing on December 1, 1995 shall be deemed inactive if it would have been resolved under the agency procedure existing prior to December 1, 1995.

(b) **INACTIVE DISCIPLINARY ACTION** - Any disciplinary action issued after December 1, 1995, is deemed inactive for the purpose of this Section in the event that:

- (1) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected; or
- (2) 18 months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months and the agency has not, prior to the expiration of the 18 month period, issued to the employee written notice, including reasons, of the extension of the period.

(c) **PLACEMENT ON INVESTIGATION** - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in GS. 126-35. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written notice of extension by the agency director. When an extension beyond the 30-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 30 day period and no further extension has been imposed, the agency must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstances is it permissible to use placement on investigation status 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. It is permissible to place an employee in investigation status with pay only under the following circumstances:

- (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
- (3) To avoid disruption of the work place or to protect the safety of persons or property.

(d) **CREDENTIALS** - By statute, and rule, some duties assigned to positions may be performed only by persons who are duly licensed, registered or certified as required by the relevant provision. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for classifications established by the State Human Resources Commission or in the position description for the position.

- (1) Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

- (2) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with an agency, disciplinary action shall be administered as follows:
 - (A) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure, or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC II .2304.
 - (B) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.
 - (C) When credential or work history falsification is discovered before employment with an agency, the applicant shall be disqualified from consideration for the position in question.
- (e) OTHER SPECIAL PROVISIONS -
 - (1) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.
 - (2) Warnings, extension of disciplinary actions and periods of placement on investigation, and placement on investigation with pay are not grievable unless an agency specifically provides for such a grievance in its agency grievance procedure. Allegations of a violation of G.S. 153A-98, 130A-42, 122C-158 shall be processed in compliance with procedures established in accordance with these statutory requirements.
 - (3) An agency shall furnish to an employee, as an attachment to the written documentation of a grievable disciplinary action, a copy of the agency grievance procedure.

History Note: Authority G.S. 126-4; 126-35;
Eff. December 1, 1995.

25 NCAC 011.2310 APPEALS

(a) An employee with permanent status who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency or county grievance procedure, whichever is applicable. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days in which to take remedial action, if any, unless the agency has waived the 60-day period, and the employee has acknowledged such waiver. An appeal to the State Human Resources Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.

(b) Grievances which allege discrimination not including unlawful workplace harassment may at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Human Resources Commission (SHRC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SHRC. A direct appeal to the SHRC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36, and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after written notification of remedial action, if any, taken by the agency must be dismissed.

*History Note: Authority G.S. 126-35; 126-36; 126-38; 150B-23; 150B-36;
Eff. December 1, 1995;
Amended Eff. July 18, 2002.*

25 NCAC 011.2407 CONDITION OF PRIVILEGE

A substantially equivalent personnel system exemption, approved by the State Human Resources Commission under NCGS 126-11, is a condition of privilege; a local government jurisdiction may operate its own system of personnel administration for all employees of the jurisdiction, including those subject to the State Human Resources Act. This privilege shall be continued by the State Human Resources Commission so long as the local system remains substantially equivalent to the Basic Requirements for a Substantially Equivalent Personnel System. The Office of State Human Resources, in its staff capacity to the State Human Resources Commission, shall act on the Commission's behalf in evaluating the ongoing equivalency status of exempted systems.

*History Note: Authority G.S. 126-11;
 Eff. October 10, 1992.*