STATUTORY PROVISIONS
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ARTICLE 1.
State Personnel System Established.

§ 126-1. Purpose of Chapter; application to local employees.

It is the intent and purpose of this Chapter to establish for the government of the State a system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry. It is also the intent of this Chapter that this system of personnel administration shall apply to local employees paid entirely or in part from federal funds, except to the extent that local governing boards are authorized by this Chapter to establish local rules, local pay plans, and local personnel systems. It is also the intent of this Chapter to make provisions for a decentralized system of personnel administration, where appropriate, and without additional cost to the State, with the State Personnel Commission as the policy and rule-making body. The Office of State Personnel shall make recommendations for policies and rules to the Commission based on research and study in the field of personnel management, develop and administer statewide standards and criteria for good personnel management, provide training and technical assistance to all agencies, departments, and institutions, provide oversight, which includes conducting audits to monitor compliance with established State Personnel Commission policies and rules, administer a system for implementing necessary corrective actions when the rule, standards, or criteria are not met, and serve as the central repository for State Personnel System data. The agency, department, and institution heads shall be responsible and accountable for execution of Commission policies and rules for their employees.

§ 126-1.1. Career State employee defined.

For the purposes of this Chapter, unless the context clearly indicates otherwise, "career State employee" means a State employee or an employee of a local entity who is covered by this Chapter pursuant to G.S. 126-5(a)(2) who:

(1) Is in a permanent position appointment; and
(2) Has been continuously employed by the State of North Carolina or a local entity as provided in G.S. 126-5(a)(2) in a position subject to the State Personnel Act for the immediate 24 preceding months.

§ 126-1A: Repealed by Session Laws 1995, c. 141, s. 2.

§ 126-2. State Personnel Commission.

(a) There is hereby established the State Personnel Commission (hereinafter referred to as "the Commission").

(b) The Commission shall consist of nine members, appointed as follows:

(1) Two members shall be attorneys licensed to practice law in North Carolina appointed by the General Assembly, one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate. The initial two attorney members appointed under this subdivision shall serve terms expiring June 30, 2004; the terms of subsequent appointees shall be six years.
(2) Two persons from private business or industry appointed by the Governor, both of whom shall have a working knowledge of, or practical experience in, human

resources management. The initial members appointed under this subdivision shall serve terms expiring June 30, 2003; the terms of subsequent appointees shall be six years.

(3) Two State employees subject to the State Personnel Act serving in nonexempt positions, appointed by the Governor, including one of whom is a veteran of the Armed Forces of the United States appointed upon the nomination of the Veterans' Affairs Commission. One employee shall serve in a State government position having supervisory duties, and one employee shall serve in a nonsupervisory position. Neither employee may be a human resources professional. The Governor shall consider nominations submitted by the State Employees Association of North Carolina. The initial members appointed under this subdivision shall serve terms expiring June 30, 2001; the terms of subsequent appointees shall be six years.

(4) Two local government employees subject to the State Personnel Act appointed by the Governor upon recommendation of the North Carolina Association of County Commissioners, one a nonsupervisory local employee and one a supervisory local employee. Neither local government employee may be a human resources professional. The initial members appointed under this subdivision shall serve terms expiring June 30, 2003; the terms of subsequent appointees shall be for six years.

(5) One member of the public at large appointed by the Governor. The initial member appointed under this subdivision shall serve for a term expiring June 30, 2001; the terms of subsequent appointees shall be for six years.

(c) Members of the Commission may serve no more than two consecutive terms. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Vacancies in appointments made by the Governor occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(d) No member of the Commission may serve on a case where there would be a conflict of interest. The appointing authority may at any time remove any Commission member for cause.

(e) Members of the Commission who are State or local government employees subject to the State Personnel Act shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Commission.

(f) Six members of the Commission shall constitute a quorum.

(g) The Governor shall designate one member of the Commission as chair.

(h) The Commission shall meet quarterly, and at other times at the call of the chair.

§ 126-3. Office of State Personnel established and responsibilities outlined; administration and supervision; appointment, compensation and tenure of Director.

(a) There is hereby established the Office of State Personnel (hereinafter referred to as "the Office") which shall be placed for organizational purposes within the Department of Administration. Notwithstanding the provisions of North Carolina State government reorganization as of January 1, 1975, and specifically notwithstanding the provisions of Chapter 864 of the 1971 North Carolina Session Laws [Chapter 143A], the Office of State Personnel shall exercise all of its statutory powers in this Chapter independent of control by the Secretary of Administration and shall be under the administration and supervision of a State Personnel Director (hereinafter referred to as "the Director") appointed by the Governor and subject to the supervision of the Commission for purposes of this Chapter.

The salary of the Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. The Director shall serve at the pleasure of the Governor.

(b) The Office shall be responsible for the following activities, and such other activities as specified in this Chapter:

(1) Providing policy and rule development for the Commission and implementing and administering all policies, rules, and procedures established by the Commission;

(2) Providing training in personnel management to agencies, departments, and institutions including train-the-trainer programs for those agencies, departments, and institutions who request such training and where sufficient staff and expertise exist to provide the training within their respective agencies, departments, and institutions;

(3) Providing technical assistance in the management of personnel programs and activities to agencies, departments, and institutions;

(4) Negotiating decentralization agreements with all agencies, departments, and institutions where it is cost-effective to include delegation of authority for certain classification and corresponding salary administration actions and other personnel programs to be specified in the agreements;

(5) Administering such centralized programs and providing services as approved by the Commission which have not been transferred to agencies, departments, and institutions or where this authority has been rescinded for noncompliance;

(6) Providing approval authority of personnel actions involving classification and compensation where such approval authority has not been transferred by the Commission to agencies, departments, and institutions or where such authority has been rescinded for noncompliance;

(7) Maintaining a computer database of all relevant and necessary information on employees and positions within agencies, departments, and institutions in the State's personnel system;

(8) Developing criteria and standards to measure the level of compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards in agencies, departments, and institutions to which authority has been delegated for classification, salary administration and other decentralized programs, and determining through routine monitoring and periodic review process, that agencies, departments, and institutions are in compliance or noncompliance with established Commission policies, rules, procedures, criteria, and standards; and

(9) Implementing corrective actions in cases of noncompliance.

(10) Administering the State employee suggestion program (NC-Thinks).

§ 126-4. Powers and duties of State Personnel Commission.

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(1) Position classification plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.

(4) Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s Birthday and Veterans Day. The Commission shall not provide for more than 11 paid holidays per year except that in those years in which Christmas Day falls on a Tuesday, Wednesday, or Thursday, the Commission shall not provide for more than 12 paid holidays.

(5a) In years in which New Year's Day falls on Saturday, the Commission may designate December 31 of the previous calendar year as the New Year's holiday, provided that the number of holidays for the previous calendar year does not exceed 12 and the number of holidays for the current year does not exceed 10. When New Year's Day falls on either Saturday or Sunday, the constituent institutions of The University of North Carolina that adopt alternative dates to recognize the legal public holidays set forth in subdivision (5) of this section and established by the Commission may designate, in accordance with the rules of the Commission and the requirements of this subdivision, December 31 of the previous calendar year as the New Year's holiday.

(6) The appointment, promotion, transfer, demotion and suspension of employees.

(7) Cooperation with the State Board of Education, the Department of Public Instruction, the University of North Carolina, and the Community Colleges of the State and other appropriate resources in developing programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.

(7a) The separation of employees.

(8) A program of meritorious service awards.

(9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.

(10) Programs of employee assistance, productivity incentives, equal opportunity, safety and health as required by Part 1 of Article 63 of Chapter 143 of the General Statutes, and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.

(11) In cases where the Commission finds discrimination, harassment, or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

(12) Repealed by Session Laws 1987, c. 320, s. 2.

(13) Repealed by Session Laws 1987, c. 320, s. 3.
(14) The implementation of G.S. 126-5(e).
(15) Recognition of State employees, public personnel management, and management excellence.
(16) The implementation of G.S. 126-7.
(17) An alternative dispute resolution procedure.
(18) Delegation of authority for approval of personnel actions through decentralization agreements with the heads of State agencies, departments, and institutions.
a. Decentralization agreements with Executive Branch agencies shall require a person, designated in the agency, to be accountable to the State Personnel Director for the compliance of all personnel actions taken pursuant to the delegated authority of the agency. Such agreements shall specify the required rules and standards for agency personnel administration.
b. The State Personnel Director shall have the authority to take appropriate corrective actions including adjusting employee salaries and changing employee classifications that are not in compliance with policy or standards and to suspend decentralization agreements for agency noncompliance with the required personnel administration standards.

The policies and rules of the Commission shall not limit the power of any elected or appointed department head, in the department head's discretion and upon the department head's determination that it is in the best interest of the Department, to transfer, demote, or separate a State employee who is not a career State employee as defined by this Chapter.

§ 126-4.1. Repealed by Session Law 2011, c. 398, s. 41

§ 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to:
(1) All State employees not herein exempt, and
(2) To all employees of the following local entities:
a. Area mental health, developmental disabilities, and substance abuse authorities.
b. Local social services departments.
c. County health departments and district health departments.
d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.
(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine.

(b) As used in this section:
(1) "Exempt position" means an exempt managerial position or an exempt policymaking position.
(2) "Exempt managerial position" means a position delegated with significant managerial or programmatic responsibility that is essential to the successful operation of a State department, agency, or division, so that the application of

G.S. 126-35 to an employee in the position would cause undue disruption to the operations of the agency, department, institution, or division.

(3) "Exempt policymaking position" means a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division, so that a loyalty to the Governor or other elected department head in their respective offices is reasonably necessary to implement the policies of their offices. The term shall not include personnel professionals.

(4) "Personnel professional" means any employee in a State department, agency, institution, or division whose primary job duties involve administrative personnel and human resources functions for that State department, agency, institution, or division.

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) A State employee who is not a career State employee as defined by this Chapter.

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in exempt policymaking positions designated pursuant to G.S. 126-5(d).

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.

(8a) Employees of a regional school established pursuant to Part 10 of Article 16 of Chapter 115C of the General Statutes.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(9a) Employees of the North Carolina Cooperative Extension Service of North Carolina State University who are employed in county operations and who are not exempt pursuant to subdivision (8) or (9) of this subsection.
(10) Repealed by Session Laws 1991, c. 84, s. 1.
(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).
(12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).
(13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).
(14) Employees of the North Carolina State Ports Authority.
(15) Employees of the North Carolina Global TransPark Authority.
(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.
(17) Repealed by Session Laws 2004-129, s.37, effective July 1, 2004.
(18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
(19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes.
(20) Repealed effective July 28, 2008.
(21) Employees of the Clean Water Management Trust Fund.
(22) Employees of the North Carolina Turnpike Authority
(23) The Executive Administrator and the Deputy Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.
(24) Employees of the Teachers' and State Employees' Comprehensive Major Medical Plan as designated by law or by the Executive Administrator of the Plan.
(25) The North Carolina State Lottery Director and employees of the North Carolina State Lottery.
(26) **Repealed by Session Law 2011, c. 266, s. 1.37(c).**
(27) The Chief Administrative Law Judge of the Office of Administrative Hearings.
(28) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission.

(c2) The provisions of this Chapter shall not apply to:
(1) Public school superintendents, principals, teachers, and other public school employees.
(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular Session, 1986), c. 1014, s. 41.
(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and employees of the Community Colleges System Office whose salaries are fixed by the State Board of Community Colleges in accordance with the provisions of G.S. 115D-3.

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Health and Human Services, and any other State department, agency or institution, whose salaries shall be set in the same manner as

set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) Repealed by Session Laws 1993, c. 321, s. 145(b), effective January 1, 1994.

(c5) Notwithstanding any other provision of this Chapter, Article 14 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c6) Article 15 of this Chapter shall apply to all State employees, public school employees, and community college employees.

(c7) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), 126-7, 126-14.3, and except as to the provisions of G.S. 126-14.2, G.S. 126-34.1(a)(2), and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to exempt managerial positions.

(c8) Except as to the provisions of Articles 5, 6, 7, and 14 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Employees of the University of North Carolina Health Care System.
(2) Employees of the University of North Carolina Hospitals at Chapel Hill, as may be provided pursuant to G.S. 116-37(a)(4).
(3) Employees of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill as may be provided pursuant to G.S. 116-37(a)(4).
(4) Employees of the Medical Faculty Practice Plan, a division of the School of Medicine of East Carolina University.

(c9) Notwithstanding any other provision of this section, the provisions of Article 16 of this Chapter shall apply to all exempt and nonexempt State employees in the executive, legislative, and judicial branches unless provided otherwise by Article 16 of this Chapter. The provisions of Article 16 of this Chapter shall not apply to employees described in subdivisions (2) and (3) of subsection (a) of this section.

(c10) Notwithstanding any other provision of this section, the provisions of G.S. 126-8.5 shall apply to all exempt and nonexempt State employees in the executive, legislative, and judicial branch unless provided otherwise by G.S. 126-8.5. The provisions of G.S. 126-8.5 shall not apply to employees described in subdivisions (2) and (3) of subsection (a) of this section.

(c11) The following are exempt from: (i) the classification and compensation rules established by the State Personnel Commission pursuant to G.S. 126-4(1) through (4); (ii) G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; (iii) G.S. 126-4(6) only as it applies to promotion and transfer; (iv) G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and (v) Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1:

(1) The Office of the Commissioner of Banks and its employees; and
(2) The following employees of the Department of Cultural Resources:
    a. Director and Associate Directors of the North Carolina Museum of History.
    b. Program Chiefs and Curators.
    c. Regional History Museum Administrators and Curators.
    d. North Carolina Symphony.
    e. Director, Associate Directors, and Curators of Tryon Palace.
    f. Director, Associate Directors, and Curators of Transportation Museum.
    g. Director and Associate Directors of the North Carolina Arts Council.
    h. Director, Assistant Directors, and Curators of the Division of State Historic Sites.

(d) (1) Exempt Positions in Cabinet Department. - The Governor may designate a total of 100 exempt policymaking positions throughout the following departments:

a. Department of Administration;
b. Department of Commerce;
c. Division of Adult Correction of the Department of Public Safety;
d. Department of Public Safety;
e. Department of Cultural Resources;
f. Department of Health and Human Services;
g. Department of Environment and Natural Resources;
h. Department of Revenue; and
i. Department of Transportation.

The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department.

(2) Exempt Positions in Council of State Departments and Offices. - The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this sub-subdivision shall be limited to 20 exempt policymaking positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 20 positions or one percent (1%) of the total number of full-time positions in the department, whichever is greater.

(2a) Designation of Additional Positions. - The Governor, elected department head, or State Board of Education may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the State Personnel Director. The General Assembly may authorize all, or part of, the additional positions to be designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

(3) Letter. - These positions shall be designated in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate by May 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.

(4) Vacancies. - In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the

President of the Senate within 120 days after the oath of office is administered to that person. In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the State Personnel Director, the Speaker of the House of Representatives, and the President of the Senate within 120 days after the oath of office is administered to the Governor.

(5) Creation, Transfer, or Reorganization. - The Governor, elected department head, or State Board of Education may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after May 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 120 days after such position is created, transferred, or in which reorganization has occurred.

(6) Reversal. - Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the Governor, by an elected department head, or by the State Board of Education in a letter to the State Personnel Director, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

(7) Hearing Officers. - Except as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision.

(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

(f) A department head is authorized to use existing budgeted positions within his department in order to carry out the provisions of subsection (e) of this section. If it is necessary to meet the requirements of subsection (e) of this section, a department head may use salary reserve funds authorized for his department.

(g) No employee shall be placed in an exempt position without 10 working days prior written notification that such position is so designated. A person applying for a position that is

designated as exempt must be notified in writing at the time he makes the application that the position is designated as exempt. (h) In case of dispute as to whether an employee is subject to the provisions of this Chapter, the dispute shall be resolved as provided in Article 3 of Chapter 150B.

§ 126-6: Repealed by Session Laws 1991, c. 65, s. 3.

§ 126-6.1: Repealed by Session Laws 1993, c. 397, s. 1.

§ 126-6.2. Reports.

(a) Beginning January 1, 1998, and quarterly thereafter, the head of each State agency, department, or institution employing State employees subject to the State Personnel Act shall report to the Office of State Personnel on the following:

(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of settlements, attorneys' fees, litigation expenses, damages, or awards incurred by the respective State agencies, departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

(2) The modification of position descriptions resulting in changes in position qualifications to allow the use of educational, experience, or other equivalencies in the hiring or promotion of State employees where such equivalencies were not previously used in the position descriptions. The report shall include an explanation of the reasons for the changes in the position descriptions and the bases for the use of the equivalencies.

(b) Beginning May 1, 1998, and annually thereafter, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits and on the use of position qualification equivalencies, as compiled in accordance with subsection (a) of this section.

(c) Beginning May 1, 1998, and then annually thereafter, the State Personnel Commission, through the Office of State Personnel, shall report to the Joint Legislative Commission on Governmental Operations on outcomes with respect to State employee hirings, promotions, disciplinary actions, and compensation, based upon demographics.

ARTICLE 2.
Salaries, Promotions, and Leave of State Employees.

§ 126-7. Compensation of State employees.

(a) It is the policy of the State to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees shall be implemented through the Comprehensive Compensation System based upon the individual performance of each State employee. The Comprehensive Compensation System shall combine salary increases and awards into an interrelated system of compensation that furthers the recruitment, retention, career service, and outstanding performance of State employees.

(a1) Repealed by Session Laws 1993, c. 388, s. 1.

(a2) For the purpose of this section, unless the context indicates otherwise:

(1) "Career growth recognition award" means an annual salary increase awarded to a State employee whose final annual performance appraisal indicates job performance that meets or exceeds management's expectations and performance requirements;
(2) "Cost-of-living adjustment" means a general salary increase given to State employees in response to inflation and labor market factors;
(3) "Performance bonus" means a salary increase that is awarded in a lump sum to a State employee whose final annual performance appraisal indicates job performance that exceeds management's expectations and performance requirements.

(b) To guide the Governor and the General Assembly in making appropriations to fund the Comprehensive Compensation System, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall present the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st of even years.

(b1) The Comprehensive Compensation System shall consist of the following components: (i) the career growth recognition award, (ii) the cost-of-living adjustment, and (iii) the performance bonus. The career growth recognition award shall be the primary method by which an employee progresses through his or her salary range and shall be awarded annually to employees who qualify for the award. An employee may receive, within a 12-month period, the career growth recognition award, the cost-of-living adjustment, and the performance bonus, if the employee's job performance equals or exceeds the level of performance set forth in subdivisions (4), (4a), and (4b) of subsection (c) of this section. No employee shall be eligible to receive during a 12-month period a performance bonus greater than the maximum amount or less than the minimum amount established by the Commission. Nothing in this section shall affect the system of longevity payments established by the Commission.

(c) Career growth recognition awards, cost-of-living adjustments, and performance bonuses shall be based on annual performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S. 126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:

(1) The performance appraisal system of each department, agency, or institution shall be designed and administered to ensure that career growth recognition awards, cost-of-living adjustments, and performance bonuses are distributed fairly.
(2) To be eligible to distribute career growth recognition awards, cost-of-living adjustments, and performance bonuses, a department, agency, or institution shall have an operative performance appraisal system which has been approved by the Commission. The performance appraisal system adopted shall use a rating scale of five levels, with level four or better qualifying for performance bonuses, level three or better qualifying for career growth recognition awards, and level two or better qualifying for cost-of-living adjustments. The performance appraisal system adopted shall adhere to modern personnel management techniques and practices in common use in the public and private sectors.
(3) The State Personnel Director shall help departments, agencies, and institutions to establish and administer their performance appraisal systems and shall provide initial and ongoing training in performance appraisal and performance system administration.

(4) An employee whose performance is rated at or above level four of the rating scale shall be eligible to receive, subject to the rules and regulations of the Commission, a performance bonus unless the employee's supervisor justifies in writing to the employee the decision not to award the performance bonus. Other than the Commission, no department, agency, or institution shall set limits so as to preclude an employee whose performance exceeds management's expectations and performance requirements from consideration for a performance bonus.

(4a) An employee whose performance is rated at or above level three of the rating scale shall receive a career growth recognition award unless the employee's supervisor justifies in writing to the employee the decision not to give the career growth recognition award. The career growth recognition award shall represent a two percent (2%) increase within the employee's assigned pay grade. In no event shall any award increase an employee's compensation above the maximum of the range. Other than the Commission, no agency, department, or institution shall set limits so as to preclude an employee whose performance meets or exceeds management's expectations and performance requirements from receiving a career growth recognition award.

(4b) An employee whose performance is rated at or above level two of the rating scale and who has not received a suspension without pay or demotion that has not been resolved shall receive a cost-of-living increase. Other than the Commission, no agency, department, or institution shall set limits or initiate written disciplinary procedures for the purpose of precluding an eligible employee from receiving a cost-of-living adjustment.

(5) Repealed by Session Laws 1993, c. 388, s. 1.

(5a) Repealed by Session Laws 1993, c. 388, s. 1.

(6) The State Personnel Director may rescind any career growth recognition award or performance bonus that does not appear to meet the intent of the provisions of the performance appraisal system and require the originating department, agency, or institution to reconsider or justify the increase.

(7) An employee who disputes the fairness of his or her performance appraisal or the amount of a performance bonus awarded or who believes that he or she was unfairly denied a career growth recognition award or performance bonus shall first discuss the problem with his or her supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final decision, or when consented to by both the agency and the employee, the supervisor's decision may be appealed by following the alternative dispute resolution process adopted by the State Personnel Commission. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues.

(7a) Each department, agency, and institution shall establish a performance management and pay advisory committee as part of the performance appraisal system. The purpose of the committee is to ensure that salary increases and

awards are made in an equitable manner. The committee shall be responsible for reviewing:

a. Agency salary increase and award policies to determine whether this section and any guidelines promulgated by the State Personnel Commission have been adhered to;

b. Agency training and education programs to determine whether all employees receive appropriate information; and

c. Performance appraisal ratings within the department, agency, or institution to determine whether an equitable distribution has been made.

The committee must have a minimum of five members. The head of each department, agency, and institution shall appoint the members of the committee with equal representation of nonsupervisory, supervisory, and management employees. The committee shall elect its own chair.

The performance management and pay advisory committee shall meet at least two times each year. The committee shall submit a written report following each meeting to the head of the department, agency, or institution. The report shall include recommendations for changes and corrections in the administration of the performance management system. The recommendations of the committee shall be advisory only. The head of the department, agency, or institution shall respond to the committee within three months. Copies of the report shall be included in the report to the Office of State Personnel that is required of that agency, department, or institution. Summaries of the report shall be included in the annual reports that are mandated by this subsection.

(8) The State Personnel Director shall monitor the performance appraisal system and the distribution of salary increases and awards within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports which shall include data on the demographics of performance ratings, the frequency of evaluations, the distribution of salary increases and awards, and the implementation schedule for salary increases and awards. The Director shall analyze the data to ensure that salary increases and awards are distributed fairly within each department, agency, and institution and across all departments, agencies, and institutions of State government and shall report back to each department, agency, and institution on its appraisal and distribution performance.

(9) The State Personnel Director shall report annually on the Comprehensive Compensation System to the Commission. The report shall evaluate the performance of each department, agency, and institution in the administration of its appraisal system and the distribution of salary increases and awards within each department, agency, and institution and across State government. The report shall include recommendations for improving the performance appraisal system and alleviating inequities. Copies of the report, as adopted by the State Personnel Commission, shall be sent to the Governor, Lieutenant Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, the standing personnel committees of the House of Representatives and the Senate, and the State Auditor. The State Personnel Director shall recommend to the General Assembly for its approval sanctions to be levied against departments, agencies, and institutions that have deficient performance appraisal systems or that do not link salary increases and awards to employee job performance. These sanctions may include withholding salary increases and

awards from the managers and supervisors of individual employing units of departments, agencies, and institutions in which discrepancies exist.

(10) Repealed by Session Laws 1993, c. 388, s. 1.

(d) Repealed by Session Laws 1993, c. 388, s. 1.

(e) The Governor and the General Assembly, subject to availability of funds, shall advance the State's Comprehensive Compensation System by recommending and making annual appropriations to the Comprehensive Compensation System in the following manner:

(1) The career growth recognition award component shall be funded each year at the level required for full implementation as provided by this section.

(2) To the extent that expansion funds are available, the Comprehensive Compensation System shall receive an additional appropriation to fund cost-of-living adjustments. Any remaining available funds shall next be allocated to provide for performance bonuses. The level of the performance bonus allocation shall not exceed two percent (2%) of the total employee payroll.

§ 126-7.1. Posting requirement; reduction in force; Work First hiring.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted in a place readily accessible to employees that is located within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the vacancy. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(a1) State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

(a2) **Repealed by Session Law 2011, c. 145, s. 29.A(a).**

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee subject to this section:

(1) Applies for another position of State employment that would constitute a promotion and;

(2) Has substantially equal qualifications as an applicant who is not a State employee then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

(c1) **Repealed by Session Law 2011, c. 145, s. 29A(a).**
(c2) **Repealed by Session Law 2011, c. 145, s. 29A(a)**
(d) **Repealed by Session Law 2011, c. 145, s. 29A(a).**
(e) Each State agency, department, and institution is encouraged to hire into State government employment qualified applicants who are current or former Work First Program participants.
(f) Each State agency, department, institution, university, community college, and local education agency shall verify , in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States.
Nothing in this section affects the extended period of priority reconsideration afforded to State employees by Section 26.14D of S.L. 2009-451, as amended by Section 9.3 of S.L. 2009-575.

§ 126-7.2. Time limit for appeals of applicants and noncareer State employees.

Any applicant or employee that has not attained career status, appealing any decision or action shall file a petition for contested case hearing with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal.

§ 126-8. Minimum leave granted State employees.

The amount of vacation leave granted to each full-time State employee subject to the provisions of this Chapter shall be determined in accordance with a graduated scale established by the State Personnel Commission which shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated monthly, cumulative to at least 30 days. On December 31 of each year, any State employee who has vacation leave in excess of the allowed accumulation shall have that leave converted to sick leave. Sick leave allowed as needed to such State employees shall be at a rate not less than 10 days for each calendar year, cumulative from year to year. Notwithstanding any other provisions of this section, no full-time State employee subject to the provisions of Chapter 126, as the same appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973, shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative to at least 30 days.

§ 126-8.1. Paid leave for certain athletic competition.

(a) As used in this section, the term "United States team" includes any group leader, coach, official, trainer, or athlete who is a member of an official United States delegation in Pan American, Olympic or international athletic competition.
(b) Any State employee or public school employee paid by State funds who has been chosen to be a member of a United States team for Pan American, Olympic or international competition shall be granted paid leave, in addition to annual and sick leave that person is otherwise entitled to, for the sole purpose of training for and competing in that competition. The paid leave shall be for the period of the official training camp and competition or 30 days a year, whichever is less.
(c) The Department of Administration may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the

Governor. Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.

§ 126-8.2. Replacement of law-enforcement officer on final sick leave.

When a sworn law-enforcement officer employed by the State is on sick leave, and the head of the department employing the officer has obtained a certification from a physician that the officer will not recover and return to duty, a replacement for the officer may be hired even though the resulting number of employees in the department exceeds the number for which an appropriation was made in the Current Operations Appropriations Act, if sufficient funds are available from appropriations to the department for salaries to pay the salary of both the new employee and the officer on sick leave until the officer's accumulated leave is exhausted or his employment is terminated.

§ 126-8.3. Voluntary shared leave.

(a) The State Personnel Commission, in cooperation with the State Board of Community Colleges and the State Board of Education, shall adopt rules and policies to allow any employee at a State agency to share leave voluntarily with an immediate family member who is an employee of a State agency, community college, or public school; and with a coworker's immediate family member who is an employee of a state agency, community college, or public school. For the purposes of this section, the term "immediate family member" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. The term "coworker" means that the employee donating the leave is employed by the same agency, department, institution, university, local school administrative unit, or community college as the employee whose immediate family member is receiving the leave. (1999-170, s. 1.)

(b) The State Personnel Commission shall adopt rules and policies for the voluntary shared leave program to allow an employee at a State agency to donate sick leave to a nonfamily member employee of a State agency. A donor of sick leave to a nonfamily member recipient shall not donate more than five days of sick leave per year to any one nonfamily member recipient. The combined total of sick leave donated to a recipient from nonfamily member donors shall not exceed 20 days per year. Donated sick leave shall not be used for retirement purposes, and employees who donate sick leave shall be notified in writing of the State retirement credit consequences of donating sick leave. (EFFECTIVE JANUARY 1, 2011)

§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination.

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the

employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees."

§ 126-8.5. Discontinued service retirement allowance and severance wages for certain State employees.

(a) When the Director of the Budget determines that the closing of a State institution or a reduction in force will accomplish economies in the State Budget, he shall pay either a discontinued service retirement allowance or severance wages to any affected State employee, provided reemployment is not available. As used in this section, "economies in the State Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. In determining whether to pay a discontinued service retirement allowance or severance wages, the Director of the Budget shall consider the recommendation of the department head involved and any recommendation of the State Personnel Director. Severance wages shall not be paid to an employee who chooses a discontinued service retirement. Severance wages shall not be subject to employer or employee retirement contributions. Severance wages shall be paid according to the policies adopted by the State Personnel Commission.

Notwithstanding any other provisions of the State's retirement laws, any employee of the State who is a member of the Teachers' and State Employees' Retirement System or the Law-Enforcement Officers' Retirement System and who has his job involuntarily terminated as a result of economies in the State Budget may be entitled to a discontinued service retirement allowance, subject to the approval of the employing agency and the availability of agency funds. An unreduced discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 55 years of age; or a discontinued service retirement allowance, not otherwise allowed, may be approved for employees with 20 or more years of creditable retirement service who are at least 50 years of age, reduced by one-fourth of one percent (¼ of 1%) for each month that retirement precedes his fifty-fifth birthday. In cases where a discontinued service retirement allowance is approved, the employing agency shall make a lump sum payment to the Administrator of the State Retirement Systems equal to the actuarial present value of the additional liabilities imposed upon the System, to be determined by the System's consulting actuary, as a result of the discontinued service retirement, plus an administrative fee to be determined by the Administrator.

The salary used to determine severance wages under this section is the last annual salary except that if the employee was promoted within the previous 12 months, the last

annual salary is that annual salary prior to the promotion. If the annual salary prior to the promotion is used, it shall be adjusted to account for any across-the-board legislative salary increases. Excluded from any calculation are any benefits such as, but not limited to, overtime pay, shift pay, holiday premium, or longevity pay.

(b) Any employee separated from State government and paid severance wages under this section shall not be employed under a contractual arrangement by any State agency, other than the constituent institutions of The University of North Carolina and the constituent institutions of the North Carolina Community College System, until 12 months have elapsed since the separation. This subsection does not affect any reduction in force rights that the employee may have.

ARTICLE 3.

Local Discretion as to Local Government Employees.

§ 126-9. County or municipal employees may be made subject to rules adopted by local governing body.

(a) When a board of county commissioners adopts rules and regulations governing annual leave, sick leave, hours of work, holidays, and the administration of the pay plan for county employees generally and the county rules and regulations are filed with the State Personnel Director, the county rules will supersede the rules adopted by the State Personnel Commission as to the county employees otherwise subject to the provisions of this Chapter.

(b) No county employees otherwise subject to the provisions of this Chapter may be paid a salary less than the minimum nor more than the maximum of the applicable salary range adopted in accordance with this Chapter without approval of the State Personnel Commission. Provided, however, that subject to the approval of the State Personnel Commission, a board of county commissioners may adjust the salary ranges applicable to employees who are otherwise subject to the provisions of this Chapter, in order to cause the level of pay to conform to local financial ability and fiscal policy. The State Personnel Commission shall adopt policies and regulations to ensure that significant relationships within the schedule of salary ranges are maintained.

(c) When two or more counties are combined into a district for the performance of an activity whose employees are subject to the provisions of this Chapter, the boards of county commissioners of the counties may jointly exercise the authority hereinabove granted in subsections (a) and (b) of this section.

(d) When a municipality is performing an activity by or through employees which are subject to the provisions of this Chapter, the governing body of the municipality may exercise the authority hereinabove granted in subsections (a) and (b) of this section.

§ 126-10. Personnel services to local governmental units.

The State Personnel Commission may make the services and facilities of the Office of State Personnel available upon request to the political subdivisions of the State. The State Personnel Commission may establish reasonable charges for the service and facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit of the general fund.

§ 126-11. Local personnel system may be established; approval and monitoring; rules and regulations.

(a) The board of county commissioners of any county may establish and maintain a personnel system for all employees of the county subject to its jurisdiction, which system and any substantial changes to the system, shall be approved by the State Personnel Commission as substantially equivalent to the standards established under this Chapter for employees of local departments of social services, local health departments, and area mental health programs, local emergency management programs. If approved by the State Personnel Commission, the employees covered by the county system shall be exempt from all provisions of this Chapter except Article 6.
(a1) With approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, the area mental health authority may establish and maintain a personnel system for all employees of the area mental health authority, which system and any substantial changes to the system, shall be equivalent to the standards established under this Chapter for employees of area mental health authorities. If approved by the State Personnel Commission, the employees covered by the area mental health authority system shall be exempt from all provisions of this Chapter except Article 6.
(b) A board of county commissioners may petition the State Personnel Commission to determine whether any portion of its total personnel system meets the requirements in (a) above. Upon such determination, county employees shall be exempt from the provisions of this Chapter relating to the approved portions of the county personnel system.
(b1) The board of an area mental health authority, with the approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, may petition the State Personnel Commission to determine whether any portion of its total personnel system meets the requirements in subsection (a1) above. Upon such determination, area mental health authority employees shall be exempt from the provisions of this Chapter relating to the approved portions of the area mental health authority personnel system except as provided in G.S. 122C-121.
(c) The Office of State Personnel shall monitor at least annually county or area mental health authority personnel systems approved under this section in order to ensure compliance.
(d) In order to define "substantially equivalent," the State Personnel Commission is authorized to promulgate rules and regulations to implement the federal merit system standards and these regulations at a minimum shall include: recruitment and selection of employees; position classification; pay administration; training; employee relations; equal employment opportunity; and records and reports.

ARTICLE 4.
Competitive Service.

§ 126-12. Governor and Council of State to determine competitive service.

The Governor, with the approval of the Council of State, shall from time to time determine for which, if any of the positions subject to the provisions of Article 1 of this Chapter, appointments and promotions shall be based on a competitive system of selection.

ARTICLE 5.
Political Activity of Employees.

§ 126-13. Appropriate political activity of State employees defined.

(a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary State employee shall:

(1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;

(2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a Class 1 misdemeanor.

§ 126-14. Promise or threat to obtain political contribution or support.

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

(1) a State employee subject to the Personnel Act,

(2) a probationary State employee,

(3) a temporary State employee, or

(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of the individual's voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to an individual listed in subdivisions (1) through (4) of this subsection

(a1) It is unlawful for an individual as defined in G.S. 138A-3(30)a. to coerce a person as described in G.S. 138A-32(d)(1), (2), or (3) to support or contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a political party by threatening discipline or promising preferential treatment with regard to that person's business with the individual's State office of that person's activities regulated by the individual's State office..

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution.

§ 126-14.1. Threat to obtain political contribution or support.

(a) It is unlawful for any person to coerce:
(1) a State employee subject to the Personnel Act,
(2) a probationary State employee,
(3) a temporary State employee, or
(4) an applicant for a position subject to the Personnel Act
to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of his voter registration by explicitly threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to any person listed in subdivisions (1) through (3) of this subsection.
(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.
(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee, who without probable cause falsely accuses a person of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution.

§ 126-14.2. Political hirings limited.

(a) It is the policy of this State that State departments, agencies, and institutions select from the pool of the most qualified persons for State government employment based upon job-related qualifications of applicants for employment using fair and valid selection criteria.
(b) All State departments, agencies, and institutions shall select from the pool of the most qualified persons for State government employment without regard to political affiliation or political influence. For the purposes of this section, the "most qualified persons" shall mean each of the State employees or applicants for initial State employment who:
(1) Have timely applied for a position in State government;
(2) Have the essential qualifications for that position; and
(3) Are determined to be substantially more qualified as compared to other applicants for the position, after applying fair and valid job selection criteria, in accordance with G.S. 126-5(e), G.S. 126-7.1, Articles 6 and 13 of this Chapter, and State personnel policies approved by the State Personnel Commission.
(c) It is a violation of this section giving rise to the remedies set forth in G.S. 126-14.4 if:
(1) The complaining State employee or applicant for initial State employment timely applied for the State government position in question;
(2) The complaining State employee or applicant for initial State employment was not hired into the position;
(3) The complaining State employee or applicant for initial State employment was among the most qualified persons applying for the position as defined in this Chapter;
(4) The successful applicant for the position was not among the most qualified persons applying for the position; and
(5) The hiring decision was based upon political affiliation or political influence.
(d) The provisions of this section shall not apply to positions exempt from this Chapter, except that this section does apply to exempt managerial positions as defined by G.S. 126-5(b)(2).

§ 126-14.3. Open and fair competition.

The State Personnel Commission shall adopt rules or policies to:

(1) Assure recruitment, selection, and hiring procedures that encourage open and fair competition for positions in State government employment and that encourage the hiring of a diverse State government workforce.
(2) Assure the proper and thorough advertisement of job openings in State government employment and lengthen, as appropriate, the period for submitting applications for State government employment.
(3) Require that a closing date shall be posted for each job opening, unless an exception for critical classifications has been approved by the State Personnel Commission.
(4) Require that timely written notice shall be provided to each unsuccessful applicant for State employment who is in the pool of the most qualified applicants for a position, as defined by G.S. 126-14.2(b).
(5) Assure that State departments, agencies, and institutions follow similar selection processes when hiring State employees in accordance with this Chapter.
(6) Assure that State supervisory and management personnel, and personnel professionals, receive adequate training and continuing education to carry out the State's policy of hiring from among the most qualified persons.
(7) Establish a monitoring system to measure the effectiveness of State agency personnel procedures to promote fairness and reduce adverse impact on all demographic groups in the State government workforce.
(8) Otherwise implement the State's policy of nonpolitical hiring practices in accordance with this Chapter.

§ 126-14.4. Remedies.

(a) A State employee or applicant for initial State employment who has reason to believe that he or she was among the pool of the most qualified persons for a position in State government employment and was denied employment or promotion in violation of G.S. 126-14.2 because of political affiliation or political influence may complain directly through the Civil Rights Division of the Office of Administrative Hearings, which shall be responsible for making an initial determination of whether there is probable cause to believe that there has been a violation of G.S. 126-14.2.

The complaining State employee or applicant shall file a complaint with the Civil Rights Division of the Office of Administrative Hearings within 30 days after the complainant receives written notice that the position in question has been filled.

The Civil Rights Division of the Office of Administrative Hearings shall promptly make appropriate formal and informal inquiries in its investigatory, fact-finding role and may consider any matter, document, or statement deemed pertinent to the initial determination, including telephone conversations, in determining if there is probable cause to believe there has been a violation of G.S. 126-14.2. The Civil Rights Division may apply to an administrative law judge in the Office of Administrative Hearings for the issuance of oaths and subpoenas under G.S. 7A-756. The investigation and fact-finding phase of the complaint shall be completed by the Civil Rights Division within 30 days.

(b) The Civil Rights Division of the Office of Administrative Hearings shall notify the person alleged to have been hired in violation of G.S. 126-14.2 of the appeal, and the person may present any information to the Civil Rights Division that is pertinent to the initial determination of probable cause. The person alleged to have been hired in violation of G.S. 126-14.2 shall be notified of the results of the initial determination and shall have a right to intervene in any administrative proceedings pursuant to G.S. 150B-23(d).

(c) Upon an initial determination that there is probable cause to believe there has been a violation of G.S. 126-14.2, the complainant may file within 15 days a petition for a contested case pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B of the General Statutes.
(d) An initial determination by the Civil Rights Division that there is not probable cause to believe there has been a violation of G.S. 126-14.2 shall be conclusive of any rights under that section but shall not be admissible or binding in any separate or subsequent civil action or proceeding.
(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a final decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate remedy, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or
(2) Requiring that the vacancy be posted pursuant to this Chapter.

(f) **Repealed by Session Law 2011, c. 398, s. 42.**
(g) A career State employee with:

(1) Less than 10 years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be given priority consideration for a position at the same salary grade equal to that held in the most recent position before being placed in the exempt managerial position if he or she has to vacate because of violation of G.S. 126-14.2.
(2) 10 or more years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable position at the same grade and salary equal to that held in the most recent position to being placed in the exempt managerial position if he or she had to vacate because of violation of G.S. 126-14.2.

§ 126-15. Disciplinary action for violation of Article.

Failure to comply with this Article is grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office.

§ 126-15.1. Probationary State employee defined.

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by G.S. 126-1.1.

ARTICLE 6.
Equal Employment and Compensation Opportunity; Assisting in Obtaining State Employment.

§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.

All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements

constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of age.

§ 126-16.1. Equal employment opportunity training.

Each State agency, each State Department, and The University of North Carolina shall:

(1) Enroll each newly appointed supervisor or manager within one year of appointment in the Equal Employment Opportunity Institute operated by the Division of Equal Opportunity Services of the Office of State Personnel. Current managers and supervisors are encouraged to enroll/participate in the Institute.
(2) Be responsible for providing supplies and resource materials for managers and supervisors who are enrolled from that department, agency or university.

§ 126-17. Retaliation by State departments and agencies and local political subdivisions.

No State department, agency, or local political subdivision of North Carolina shall retaliate against an employee for protesting alleged violations of G.S. 126-16.

§ 126-18. Compensation for assisting person in obtaining State employment barred; exception.

It shall be unlawful for any person, firm or corporation to collect, accept or receive any compensation, consideration or thing of value for obtaining on behalf of any other person, or aiding or assisting any other person in obtaining employment with the State of North Carolina; provided, however, any person, firm, or corporation that is duly licensed and supervised by the North Carolina Department of Labor as a private employment service acting in the normal course of business, may collect such regular and customary fees for services rendered pursuant to a written contract when such fees are paid by someone other than the State of North Carolina; however, any person, firm, or corporation collecting fees for this service must have been licensed by the North Carolina Department of Labor for a period of not less than one year.
Any person, firm or corporation collecting fees for this service must make a monthly report to the Department of Labor listing the name of the person, firm or corporation collecting fees and the person for whom a job was found, the nature and purpose of the job obtained, and the fee collected by the person, firm or corporation collecting the fee. Violation of this section shall constitute a Class 1 misdemeanor.

§ 126-19. Equal employment opportunity plans; reports; maintenance of services by State Personnel Director.

(a) Each member of the Council of State under G.S. 143A-11, each of the principal departments enumerated in G.S. 143B-6, The University of North Carolina, the judicial branch, and the legislative branch, shall develop and submit an Equal Employment Opportunity plan which shall include goals and programs that provide positive measures to assure equitable and fair representation of North Carolina's citizens. The plans developed by the judicial branch and by the Legislative Services Office on behalf of the legislative branch shall be submitted to the General Assembly on or before June 1 of each year. All other such plans shall be submitted to the State Personnel Director for review and approval on or before March 1, of each year.

(b) The State Personnel Commission shall submit a report to the General Assembly concerning the status of Equal Employment Opportunity plans and programs for all State departments, agencies, [and] universities, which are required by this Chapter to report to the State Personnel Director, on or before June 1 of each year. If any plan has been disapproved, the report shall contain reasons for disapproval. The status report submitted to the General Assembly by the State Personnel Director and the plans submitted to the General Assembly by the judicial branch and the Legislative Services Office on behalf of the legislative branch shall contain the total number of persons employed in each job category, the race, sex, salary, and other demographics relative to persons hired and promoted during the reporting period, analysis of the data, and an indication as to which goals were achieved.

(c) The State Personnel Director shall at least maintain current services of Equal Employment Opportunity technical assistance, training, oversight, monitoring, evaluation, support programs, and reporting to assure that State government's work force at all occupational levels reflect North Carolina's population. To the extent reasonably possible, these services shall be provided by qualified personnel who have continuous experience in the field of Equal Employment Opportunity and affirmative action and who are sensitive to circumstances and experiences of individuals from diverse backgrounds and cultures, and recognize that efficient and effective government requires the talents, skills, and abilities of all available human resources.

§§ 126-20, 126-21: Reserved for future codification purposes.

ARTICLE 7.
The Privacy of State Employee Personnel Records.

§ 126-22. Personnel files not subject to inspection under § 132-6.

(a) Except as provided in G.S. 126-23 and G.S. 126-24, personnel files of State employees shall not be subject to inspection and examination as authorized by G.S. 132-6.

(b) For purposes of this Article the following definitions apply:
- (1) "Employee" means any current State employee, former State employee, or applicant for State employment.
- (2) "Employer" means any State department, university, division, bureau, commission, council, or other agency subject to Article 7 of this Chapter.
- (3) "Personnel file" means any employment-related or personal information gathered by an employer, the Retirement Systems Division of the Department of State Treasurer, or by the Office of State Personnel. Employment-related information contained in a personnel file includes information related to an individual's application, selection, promotion, demotion, transfer, leave, salary, contract for employment, benefits, suspension, performance evaluation, disciplinary actions, and termination. Personal information contained in a personnel file includes an individual's home address, social security number, medical history, personal financial data, marital status, dependents, and beneficiaries.
- (4) "Record" means the personnel information that each employer is required to maintain in accordance with G.S. 126-23.

(c) . Personnel files of former State employees who have been separated from State employment for 10 or more years may be open to inspection and examination except for papers and documents relating to demotions and to disciplinary actions resulting in the dismissal of the employee and personnel files maintained by the Retirement Systems Division of the Department of State Treasurer.

(d) Notwithstanding any provisions of this section to the contrary, the Retirement System Division of the State Department of Treasurer may disclose the name and mailing address of former state employees to domiciled, nonprofit organizations representing 10,000 or more state government, local government, or public school employees.

§ 126-23. Certain records to be kept by State agencies open to inspection.

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

(1) Name.
(2) Age.
(3) Date of original employment or appointment to State service, the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
(4) Current position.
(5) Title.
(6) Current salary.
(7) Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.,
(8) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.
(9) Date and general description of the reasons for each promotion with that department, agency, institution, commission or bureau.
(10) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.
(11) The office or station to which the employee is currently assigned.

(b) For purpose of this section, the term “salary” includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Except as provided in subsection (d) of this section, any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

(d) Notwithstanding any other provision of this section, persons in the custody of, or under the supervision of, the Division of Adult Correction of the Department of Public Safety and persons in the custody of local confinement facilities are not entitled to access to the records made public under this section and are prohibited from obtaining those records, absent a court order authorizing access to, or custody, or possession.
(e) An attorney investigating allegations of unlawful misconduct or abuse by a Division of Adult Correction of the Department of Public Safety employee may request, and shall be provided with, information sufficient to identify the full name or names of the employee alleged to be involved in the misconduct or abuse in the current position of the employee within the Department; or, the last position held by the employee and the last date of employment by the Department. The attorney may not give the offender copies of departmental records or official documents absent a court order authorizing access to, or custody, or possession.

§ 126-24. Confidential information in personnel files; access to such information.

All other information contained in a personnel file is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file in its entirety except for (i) letters of reference solicited prior to employment, or (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. An employee's medical record may be disclosed to a licensed physician designated in writing by the employee;
(2) The supervisor of the employee;
(3) Members of the General Assembly who may inspect and examine personnel records under the authority of G.S. 120-19;
(4) A party by authority of a proper court order may inspect and examine a particular confidential portion of a State employee's personnel file; and
(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the department head of the employee whose record is to be inspected or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Chapter, any department head may, in his discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to his department or whose personnel file is maintained in his department and the reasons therefore and may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that the release of such information or the inspection and examination of such file or portion thereof is essential to maintaining the integrity of such department or to maintaining the level or quality of services provided by such department; provided that prior to releasing such information or making such file or portion thereof available as

provided herein, such department head shall prepare a memorandum setting forth the circumstances which the department head deems to require such disclosure and the information to be disclosed. The memorandum shall be retained in the files of said department head and shall be a public record.

§ 126-25. Remedies of employee objecting to material in file.

An employee, former employee or applicant for employment who objects to material in his file may place in his file a statement relating to the material he considers to be inaccurate or misleading. An employee, former employee or applicant for employment who objects to material in his file because he considers it inaccurate or misleading may seek the removal of such material from his file in accordance with the grievance procedure of that department, including appeal to the State Personnel Commission. When a department, division, bureau, commission, or other agency agrees or is ordered by the State Personnel Commission or by the General Court of Justice of this State to remove inaccurate or misleading material from an employee's file, which information was placed in the file by the supervisor or other agent of management, it shall destroy the original and all copies of the material removed and may not retain any inaccurate or misleading information derived from the material removed.

§ 126-26. Rules and regulations.

The State Personnel Commission shall prescribe such rules and regulations as it deems necessary to implement the provisions of this Article.

§ 126-27. Penalty for permitting access to confidential file by unauthorized person.

Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of a personnel file designated as confidential by this Article, unless such person is one specifically authorized by G.S. 126-24 to have access thereto for inspection and examination, shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00).

§ 126-28. Penalty for examining, copying, etc., confidential file without authority.

Any person, not specifically authorized by G.S. 126-24 to have access to a personnel file designated as confidential by this Article, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00).

§ 126-29. Access to material in file for agency hearing.

A party to a quasi-judicial hearing of a State agency subject to Article 7 of this Chapter, or a State agency subject to Article 7 of this Chapter which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion. Nothing in this Article shall impose liability on any agent or officer of the State for compliance with this provision, notwithstanding any other provision of this Article.

§ 126-30. Fraudulent disclosure and willful nondisclosure on application for State employment; penalties.

(a) Any employee who knowingly and willfully discloses false or misleading information, or conceals dishonorable military service; or conceals prior employment history or other requested information, either of which are significantly related to job responsibilities on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment. Dismissal shall be mandatory where the applicant discloses false or misleading information in order to meet position qualifications. Application forms for State employment shall include a statement informing applicants of the consequences of such fraudulent disclosure or lack of disclosure.
(b) The employing authority within each department, university, board, or commission, shall verify the status of credentials and the accuracy of statements contained in the application of each new employee within 90 days from the date of the employees employment. Failure to verify the application shall not bar action under subsection (a) above.
(c) The State Personnel Commission shall issue rules and procedures to implement this section for all departments, agencies and institutions which are not exempted from the State Personnel Act under G.S 126-5(c1). Each agency, department and institution which is exempted under G.S. 126-5(c1) shall issue regulations to implement this section pursuant to the rulemaking procedures applicable to it.

§§ 126-31 through 126-33: Reserved for future codification purposes.

ARTICLE 8.
Employee Appeals of Grievances and Disciplinary Action.

§ 126-34. Grievance appeal for career State employees.

Unless otherwise provided in this Chapter, any career State employee having a grievance arising out of or due to the employee's employment and who does not allege unlawful harassment or discrimination because of the employee's age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss the problem or grievance with the employee's supervisor and follow the grievance procedure established by the employee's department or agency. Any State employee having a grievance arising out of or due to the employee's employment who alleges unlawful harassment because of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by G.S. 168A-3 shall submit a written complaint to the employee's department or agency. The department or agency shall have 60 days within which to take appropriate remedial action. If the employee is not satisfied with the department or agency's response to the complaint, the employee shall have the right to appeal directly to the State Personnel Commission.

§ 126-34.1. Grounds for contested case under the State Personnel Act defined.

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:
   a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.
   b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.

(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.

(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(7) Any retaliatory personnel action that violates G.S. 126-85.

(8) Denial of promotion in violation of G.S. 126-14.2, where an initial determination found probable cause to believe there has been a violation of G.S. 126-14.2.

(9) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(10) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.

(11) Violation of any of the following federal statutes as applied to the employee:
   a. The Fair Labor Standards Act, 29 U.S.C. Sec. 201, et seq.
   b. The Age Discrimination in Employment Act, 29 U.S.C. Sec. 621, et seq.
   c. The Family and Medical Leave Act, 29 U.S.C. Sec. 2601, et seq.
   d. The Americans with Disabilities Act, 42 U.S.C. Sec. 12101, et seq.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age. An applicant may not, however, file a contested case where political affiliation was the reason for the person's nonselection for (i) an exempt policymaking position as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief administrative assistant position under G.S. 126-5(c)(4), or (iii) a confidential assistant or confidential secretary position under G.S. 126-5(c)(2).

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126.

§ 126-34.2. Alternative dispute resolution.

(a) Notwithstanding the provisions of Articles 6 and 7 of this Chapter, or the other provisions of this Article, with the consent of the parties, a matter for which a State employee, a former State employee, or an applicant for State employment has filed a contested case under Article 3 of Chapter 150B of the General Statutes may be handled in accordance with alternative dispute resolution procedures adopted by the State Personnel Commission.

(b) In its discretion, the State Personnel Commission may adopt alternative dispute resolution procedures for the resolution of matters not constituting grounds for a contested case under G.S. 126-34.1.

(c) Nothing in this section shall be construed to limit the right of any person to file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

§ 126-35. Just cause; disciplinary actions for State employees.

(a) No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision. The State Personnel Commission may adopt, subject to the approval of the Governor, rules that define just cause.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this Article, are those actions taken in accordance with the disciplinary procedures adopted by the State

Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.
(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action.
(d) In contested cases conducted pursuant to Chapter 150B of the General Statutes, the burden of showing that a career State employee subject to the State Personnel act was discharged, suspended, or demoted for just cause rests with the department or agency employer.

§ 126-36. Appeal of unlawful State employment practice.

(a) Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied the employee or that demotion, layoff, transfer, or termination of employment was forced upon the employee in retaliation for opposition to alleged discrimination or because of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission.
(b) Subject to the requirements of G.S. 126-34, any State employee or former State employee who has reason to believe that the employee has been subjected to any of the following shall have the right to appeal directly to the State Personnel Commission:

(1) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.
(2) Retaliation for opposition to harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.

§ 126-36.1. Appeal to Personnel Commission by applicant for employment.

Any applicant for State employment who has reason to believe that employment was denied in violation of G.S. 126-16 shall have the right to appeal directly to the State Personnel Commission.

§ 126-36.2. Appeal to Personnel Commission by career State employee denied notice of vacancy or priority consideration.

Any career State employee who has reason to believe that he was denied promotion due to the failure of the agency, department, or institution that had a job vacancy to:

(1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;
(2) Give him priority consideration pursuant to G.S. 126-7.1(c)

may appeal directly to the State Personnel Commission.

§ 126-37. Administrative Law Judge's final decision.

(a) Appeals involving a disciplinary action, alleged discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The administrative law judge is hereby authorized to reinstate any employee to the position from which the

employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority.
(b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1, effective January 1, 1995.
(b1) Repealed by Session Law 2011, c. 398, s. 44.
(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable federal standards shall be heard as all other appeals.
(c) If the local appointing authority is other than a board of county commissioners, the local appointing authority must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the receipt of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene.

§ 126-38. Time limit for appeals.

Any employee appealing any decision or action shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal.

§ 126-39. Scope of this Article.

Except for positions subject to competitive service and except for appeals brought under G.S. 126-16, 126-25, and 126-36, this Article applies to all State employees who are career State employees at the time of the act, grievance, or employment practice complained of.

§ 126-40: Repealed by Session Laws 1985, c. 746, s. 16.

§ 126-41. Attorney and witness fees.

The decision of the Commission assessing or refusing to assess reasonable witness fees or a reasonable attorney's fee as provided in G.S. 126-4(11) is a final agency decision appealable under Article 4 of Chapter 150B of the General Statutes. The reviewing court may reverse or modify the decision of the Commission if the decision is unreasonable or the award is inadequate. The reviewing court shall award court costs and a reasonable attorney's fee for representation in connection with the appeal to an employee who obtains a reversal or modification of the Commission's decision in an appeal under this section.

§ 126-42: Reserved for future codification purposes.

ARTICLE 9.
The Administrative Procedure Act and Modifications.

§§ 126-43, 126-44: Repealed by Session Laws 1987, c. 320, s. 9.

§ 126-45: Repealed by Session Laws 1977, c. 866, s. 18.

§§ 126-46 through 126-50: Reserved for future codification purposes.

ARTICLE 10.
Interchange of Governmental Employees.

§ 126-51. Short title.

This Article shall be known and may be cited as the "North Carolina Interchange of Governmental Employees Act of 1977."

§ 126-52. Definitions.

For purposes of this Article:

(1) "Assigned employee" means an employee of a sending agency who is assigned or detailed to a receiving agency as part of the employee's regular duties with the sending agency.
(2) "Employee on leave" means an employee on leave of absence without pay from a sending agency who becomes an employee of a receiving agency while on leave from the sending agency.
(3) "Receiving agency" means any division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government which, under this Article, receives an employee of another governmental division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government.
(4) "Sending agency" means any division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government which, under this Article, sends any employee thereof to another governmental division, department, agency, instrumentality, authority, or political subdivision of the federal government or of a state or local government.

§ 126-53. Authority to interchange employees.

(a) Any division, department, agency, instrumentality, authority, or political subdivision of the State of North Carolina is authorized to participate in a program of interchange of employees with divisions, departments, agencies, instrumentalities, authorities, or political subdivisions of the federal government, of another state, or of this State, as a sending agency or a receiving agency.
(b) The period of individual assignment, detail, or leave of absence under an interchange program shall not exceed two years.
(c) The temporary assignment of the employee may be terminated by mutual agreement between the sending agency and the receiving agency.
(d) Elected officials may not participate in a program of interchange under this Article.

§ 126-54. Status of employees of sending agency.

(a) Employees of a sending agency participating in an exchange of personnel authorized by G.S. 126-53 may be considered during such participation to be either assigned employees or employees on leave.
(b) Assigned employees shall be entitled to the same salary and employment benefits to which they would be entitled as employees of the sending agency and shall remain

employees of the sending agency for all purposes unless otherwise provided in this Article or in a written agreement between the sending agency and the receiving agency.
(c) Employees on leave shall have the same rights, benefits and obligations as other State or local employees subject to this Chapter who are granted leaves of absences, unless otherwise provided in this Article, or in a written agreement between the sending agency and the receiving agency.
(d) When a division, department, agency, instrumentality, authority or political subdivision of the State of North Carolina acts as a sending agency, employees participating in an exchange of personnel authorized by G.S. 126-53, whether considered assigned employees or employees on leave, shall have the same rights, benefits and obligations to participate in and receive benefits, including death benefits, from any retirement system of which they are members as employees of the sending agency, whether they are members of the Teachers' and State Employees' Retirement System, the North Carolina Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Retirement Fund, or other Retirement System which has been or may be established by the State for public employees; provided, however, that the receiving agency agrees to and makes the employer contributions and deducts from the salary of the employee the employee contributions for continued membership in such Retirement System. Provided, further, that if no contributions are paid into the appropriate Retirement System during the period that the employee participates in the exchange of personnel authorized by this Article, such employee shall remain entitled to death benefits resulting from his death during the period of the exchange. Provided, that where duplicate benefits would otherwise be payable on account of disability or death, the employee or his estate shall elect, within one year of the date of disability or death, which benefits to receive.

§ 126-55. Travel expenses of employees from this State.

A sending agency in this State shall not pay the travel expenses of its assigned or on leave employees and shall not pay the travel expenses of such employees incurred in the course of performing work for the receiving agency. Such expenses shall be borne by the receiving agency.

§ 126-56. Status of employees of other governments.

(a) When a division, department, agency, instrumentality, authority or political subdivision of the State of North Carolina acts as a receiving agency, assigned employees of the sending agency remain the employees of the sending agency and continue to receive the employment benefits of the sending agency unless otherwise specified in a written agreement between the sending agency and the receiving agency.
(b) When a division, department, agency, instrumentality, authority or political subdivision of this State acts as a receiving agency, employees on leave from the sending agency will receive appointments as employees with the receiving agency and will be entitled to the same employment benefits as other employees of the receiving agency unless otherwise specified in a written agreement between the sending agency and the receiving agency. Such appointments may be made without regard to any rules or regulations of the receiving agency regarding the selection of employees; but all rules of the State Personnel Act shall apply to State employees.

§ 126-57. Travel expenses of employees of other governments.

A receiving agency in the State of North Carolina may, in accordance with its travel regulations and travel regulations by law, pay the travel expenses incurred in the course of an assigned employee's duties or incurred in the course of the duties of an employee on leave with the receiving agency on the same basis as the travel expenses of regular employees are paid.

§ 126-58. Administration.

The State Personnel Commission and any State division, department, agency, instrumentality, authority or political subdivision participating in an interchange of employees program may promulgate rules or regulations necessary for the administration of such program, so long as such rules or regulations do not conflict with the provisions of this Article or any other provision of law.

§§ 126-59 through 126-63: Reserved for future codification purposes.

ARTICLE 11.
Governor's Commission on Governmental Productivity.

§§ 126-64 through 126-73: Repealed by Session Laws 1985, c. 479, s. 153(a).

ARTICLE 12.
Work Options Program for State Employees.

§ 126-74. Work Options Program established.

There is established a Work Options Program for State employees in the Office of State Personnel to be administered by the State Personnel Commission. The State Personnel Director shall assign an employee within the Office of State Personnel, to be known as the State Work Options Coordinator, to direct the Work Options Program as established in this Article.

§ 126-75. Work options for State employees.

(a) The following work options allowed State employees are to be included in the program administered under this Article:

(1) Flexible work hours as established by the State Personnel Commission;
(2) Job sharing as permitted by the State Personnel Commission;
(3) Permanent part-time positions as established under the State Personnel Act.

(b) The State Personnel Commission shall examine the present options listed in subsection (a) of this section available to State employees and other options the State Personnel Commission may make available for a comprehensive program of work options for State employees. The State Personnel Commission shall, with the concurrence of the agency, determine the need for additional permanent part-time positions within State Government and how increased use of these positions could benefit employee morale and productivity as well as increase the use of the available labor force. None of the provisions of this Article shall be administered to reduce the total number of hours per day a State office normally is open to serve the public.

§ 126-76. Promoting Work Options Program.

The State Personnel Commission shall develop a program to expand the use of work options. This program shall include training sessions for agency personnel to instruct them in the use of work options available to State employees. The State Personnel Commission shall also provide technical assistance to agency personnel in developing a Work Options Program for each agency or expanding existing programs in each agency. The Work Options Coordinator shall also identify personnel positions within the State Personnel System which can effectively be structured in job sharing or permanent part-time employment positions.

§ 126-77. Authority of agencies to participate.

The State Personnel Commission shall request from each agency assistance in formulating the Work Options Program. Any division, department, agency, instrumentality or authority shall participate in the program of work options as established in this Article.

§ 126-78. Administration.

The State Personnel Commission and any State division, department, agency, instrumentality or authority participating in the State Work Options Program shall promulgate rules necessary for the administration of the program.

§ 126-79. Report required.

The State Personnel Commission shall require a biennial report of each State division, department, agency, instrumentality or authority on the status of the Work Options Program. The State Personnel Commission shall in turn make a biennial report to the General Assembly on the status of the Work Options Program, including any increase in the use of job sharing, flexible work hours and any other approved work option for State employees.

ARTICLE 13.
Veteran's Preference.

§ 126-80. Declaration of policy.

It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment for positions subject to the provisions of this Chapter with every State depart

§ 126-81. Definitions.

As used in this Article:

(1) "A period of war" includes World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

(2) "Veteran" means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.

(3) "Eligible veteran" means:

a. A veteran who served during a period of war; or
b. The spouse of a disabled veteran; or
c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as a result of such service; or
d. A veteran who suffered a service-connected disability during peacetime; or
e. The spouse of a veteran described in subdivision d. of this subsection; or
f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who died for service-related reasons during peacetime.

§ 126-82. State Personnel Commission to provide for preference.

(a) The State Personnel Commission shall provide that in evaluating the qualifications of an eligible veteran against the minimum requirements for obtaining a position, credit shall be given for all military service training or schooling and experience that bears a reasonable and functional relationship to the knowledge, skills, and abilities required for the position. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.
(b) The State Personnel Commission shall provide that if an eligible veteran has met the minimum requirements for the position, after receiving experience credit under subsection (a) of this section, he shall receive experience credit as determined by the Commission for additional related and unrelated military service. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.
(c) The State Personnel Commission may provide that in reduction in force situations where seniority or years of service is one of the considerations for retention, an eligible veteran shall be accorded credit for military service.
(d) Any eligible veteran who has reason to believe that he or she did not receive a veteran's preference in accordance with the provisions of this Article or rules adopted under it may appeal directly to the State Personnel Commission.
(e) The willful failure of any employee subject to the provisions of Article 8 of this Chapter to comply with the provisions of this Article or rules adopted under it constitutes personal misconduct in accordance with the provisions and promulgated rules of this Chapter, including those for suspension, demotion, or dismissal.

§ 126-83. Exceptions.

Notwithstanding G.S. 126-5, and notwithstanding provisions in that section that only certain Articles of this Chapter apply to some employees, this Article applies to all persons covered by this Chapter except those exempted by G.S. 126-5(c)(2), G.S. 126-5(c)(3), G.S. 126-5(c)(4), G.S. 126-5(c1), G.S. 126-5(c2), or G.S. 126-5(c3), but this Article does not apply to those persons covered by G.S. 126-5(a)(2). G.S. 128-15 shall apply to those persons exempted from coverage of this Article, but shall not apply to any person covered by this Article.

ARTICLE 14.
Protection for Reporting Improper Government Activities.

§ 126-84. Statement of policy.

(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting:

(1) A violation of State or federal law, rule or regulation;
(2) Fraud;
(3) Misappropriation of State resources;
(4) Substantial and specific danger to the public health and safety; or
(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels.

§ 126-85. Protection from retaliation.

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6(c)(16).

§ 126-86. Civil actions for injunctive relief or other remedies.

Any State employee injured by a violation of G.S. 126-85 may maintain an action in superior court for damages, an injunction, or other remedies provided in this Article against the person or agency who committed the violation within one year after the occurrence of the alleged violation of this Article; provided, however, any claim arising under Article 21 of Chapter 95 of the General Statutes may be maintained pursuant to the provisions of that Article only and may be redressed only by the remedies and relief available under that Article.

§ 126-87. Remedies.

A court, in rendering a judgment in an action brought pursuant to this Article, may order an injunction, damages, reinstatement of the employee, the payment of back wages, full

reinstatement of fringe benefits and seniority rights, costs, reasonable attorney's fees or any combination of these. If an application for a permanent injunction is granted, the employee shall be awarded costs and reasonable attorney's fees. If in an action for damages the court finds that the employee was injured by a willful violation of G.S. 126-85, the court shall award as damages three times the amount of actual damages plus costs and reasonable attorney's fees against the individual or individuals found to be in violation of G.S. 126-84.

§ 126-88. Notice of employee protections and obligations.

It shall be the duty of an employer of a State employee to post notice in accordance with G.S. 95-9 or use other appropriate means to keep his employees informed of their protections and obligations under this Article.

ARTICLE 15.
Communications With Members of the General Assembly.

§ 126-90. Communications with members of the General Assembly.

A State employee's right to speak to a member of the General Assembly at the member's request shall not be directly or indirectly limited by the employee's supervisor or by any policy of the department, agency, or institution that employs that State employee.

Article 16.
Flexible Compensation Plan.

§ 126-95. Flexible compensation plan.

(a) The Director of the Budget may provide eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 a program of dependent care assistance as available under section 129 and related sections of the Internal Revenue Code of 1986, as amended. The Director of the Budget may authorize State departments, institutions, and agencies to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, the Director of the Budget may select a contractor only upon a thorough and completely competitive procurement process.

(b) Notwithstanding any other provisions of law relating to the salaries of officers and employees of departments, institutions, and agencies of State government, the Director of the Budget may provide a plan of flexible compensation to eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 for benefits available under section 125 and related sections of the Internal Revenue Code of 1986, as amended. This plan shall not replace, substitute for, or duplicate any benefits provided to employees and officers under Article 1A of Chapter 120 of the General Statutes and Articles 1, 3, 4, and 6 of Chapter 135 of the General Statutes. The plan may, however, include offerings for products and benefits that are supplemental or additional to these statutory benefits. In providing a plan of flexible compensation, the Director of the Budget

may authorize State departments, institutions, and agencies to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. With the approval of the Director of the Budget, savings in the employer's share of contributions under the Federal Insurance Contributions Act on account of the reduction in salary may be used to pay some or all of the administrative expenses of the program. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process.

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TITLE VII OF THE CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, effective March 24, 1972

The Equal Employment Opportunity Act of 1972 makes very significant amendments to the Civil Rights Act of 1964

Under the 1964 Civil Rights Act, state and local governments and their employees were excluded from Title VII coverage. However, 1972 amendments to Title VII extend coverage to all state and local governments, governmental agencies, political sub-divisions (except for elected officials, their personal assistants and immediate advisors). The exemption for elected officials and their personal assistants and immediate advisors "is intended to be construed very narrowly and is in no way intended to establish an overall narrowing of the expanded coverage of state and local governmental employees."

The Equal Employment Opportunity Commission is charged with administering Title VII of the Civil Rights Act of 1964, Under the Act, EEOC has the authority to investigate and conciliate charges of discrimination because of race, color, religion, sex, or national origin by employers, unions, employment agencies, and joint apprenticeship or training committees. Under the 1972 amendments, EEOC no longer is limited to investigation and conciliation of charges. It can now bring an action through the U.S. Attorney General in a U.S. district court against a non-responsive party.

PROHIBITIONS

Title VII makes it unlawful for an employer to discriminate as to hiring, firing, compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex, or national origin. It also forbids employers to limit, segregate, or classify employees in any way that tends to deprive any individual of employment opportunities or adversely affects his employment status because of his race, color, religion, sex or national origin in advertisements relating to employment.

In addition, it is unlawful to discriminate on any of these five bases in apprenticeship, training, or retraining programs. It also is illegal to indicate a preference or a discrimination based on race, color, religion, sex or national origin in advertisements relating to employment.

These prohibitions, however, are subject to some exceptions.

EXCEPTIONS

A broad exception to the antidiscrimination prohibitions makes it clear that wage discrimination is permitted when based on merit, seniority, and quantity or quality of production.

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The broadest exception permits discrimination based on religion, sex, or national origin if this is because of a "bona fide occupational qualification." This applies to hiring, employment, referral, training, and advertising. The exception for bona fide occupational qualifications does not extend to discrimination based on race or color.

The law makes exceptions for discrimination resulting from a bona fide occupational qualification, provided it is "reasonably necessary to the normal operation" of the enterprise. This exception, however, is applicable only to discrimination based on religion, sex, or national origin. Title VII does not recognize a "bona fide occupational qualification" based on race or color.

RECRUITING AND HIRING

Essential to a nondiscriminatory employment policy under the federal laws is a basic procedure for recruiting and selecting employees that does not intentionally or inadvertently work to screen out minority group members.

An employer is not required to go out and hire a designated quota of minority group members. But a serious imbalance in the number of such workers in the work force, when compared to the proportion in the area, may suggest to federal officials that something is wrong with hiring policies.

Reliance on "walk-in" applicants and "word-of-mouth" recruiting may not be regarded as enough if the work force is predominantly white.

Quota Hiring

An explicit ban on any requirement of quota hiring is contained in Title VII. It reads:

"Nothing contained in this title shall be interpreted to require any employer....to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may by any employment agency...in comparison with the total number or percentage of persons exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in available work force in any community, State, section, or other area.

Prior Hiring Practices

The extent to which an employer's past hiring practices have resulted in a predominantly white work force may well determine the extent to which the federal agencies will require affirmative acts to recruit from minority group sources. EEOC has taken the position that an employer with a disproportionately low number of minority group members in his work force probably has

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acquired a reputation as a discriminatory employer. In such a case, the mere announcement of a policy of equal employment opportunity may not be regarded as enough to offset the past reputation.

An employer whose past hiring practices have resulted in a good minority group representation among production workers is not necessarily in the clear. A disproportionately low number of minority group members in white-collar, professional, or supervisory jobs suggest that special recruiting efforts are needed in these areas.

Walk-In Applicants

An employer with a predominantly white work force who relies largely on "walk-in" applicants to fill new jobs may not be in compliance with the Act.

Reliance on "word-of-mouth" recruiting will only perpetuate the existing racial make-up of the work force.

Once a good racial mix is achieved in the work force, an employer presumably could rely on walk-in applicants and word-of-mouth recruiting.

Advertising for Applicants

Except in a very rare case when religion, sex, or national origin is a bona fide job qualification, job offers in newspaper ads, posters, and the like must not indicate any limitation as to race, color, religion, sex, or national origin. Color and race can never be a bona fide job qualification.

Hiring Standards

Affirmative recruiting efforts that substantially increase the flow of minority group applicants will not satisfy the law if, because of unreasonably high standards for hire, few of these applicants are hired.

EEOC places considerable emphasis on hiring standards that are not job related, but rather reflect the norm of the white community. Employers must be prepared to demonstrate that their hiring standards do not automatically screen out applicants whose speech, dress, and personal work habits differ from those of the predominant group.

Hiring Standards: Police Records

It is unlawful to discharge or refuse to employ a minority group person because of a conviction record unless the particular circumstances of each case (e.g., the time, nature, and number of the convictions and the employee's immediate past employment record) indicate that

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employment of that particular person for a particular job is shown to be inconsistent with the safe and efficient operation of that job.

Hiring Standards: High School Diplomas

The U.S. Supreme Court has ruled that an employer who uses employment tests or other job screening standards, such as possession of a high school diploma, must be able to show that they are "demonstrably a reasonable measure of job performance." The court left open, however, the question of whether an employer may use tests or other screening requirements that take into account capability for future promotions.

Hiring Restrictions

Although a hiring policy may be "objectively and fairly applied" to applicants of all races, it may still discriminate against one racial group and as such be ruled discriminatory under Title VII.

Height Requirements - EEOC has held that an employer's rigid adherence to a height requirement for purposes of hiring, in the absence of a showing of business necessity, can have a discriminatory effect upon certain groups, a significantly higher percentage of who fall below such a standard, such as women and Spanish-surnamed Americans.

Appearance, Manner of Speech - Rejection of a job applicant because of his appearance and manner of speaking may be regarded as unlawful if the appearance and manner of speaking are peculiar to his race or national origin.

Pre-employment Inquiries, Concerning Race, Color, Religion, or National Origin - These are not, by themselves, a violation of Title VII. But EEOC regards such inquiries as totally irrelevant to an applicant's ability or qualification, except in those rare instances where religion or national origin is a bona fide occupational qualification. Hence, such inquiries, unless otherwise explained, may be regarded as evidence of discrimination.

A requirement that a photograph accompany an employment application also may be regarded as evidence of discrimination.

EMPLOYMENT CONDITIONS

The law against employment discrimination extends to virtually every aspect of the employer-employee relationship including discrimination with respect to "compensation, terms, conditions, or privileges of employment.

Wages

Discrimination with respect to compensation covers a variety of practices, such as:

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Different rates of pay based on race, sex, religion, or national origin to individuals or groups of employees doing similar work.

Different treatment of employees with respect to merit increases if based on race, sex, religion, or national origin.

Disproportionate differences in pay rates for different jobs based on race, sex, religion, or national origin.

Different treatment of employees with respect to overtime pay opportunities, where based on race, sex, religion, or national origin.

Training and Promotion

Employees of similar capabilities must be offered the same opportunities for training, promotion, transfer, and apprenticeship programs.

Discriminatory Environment

A "racially tense situation" may be a particular source of difficulty when a Black is promoted into a formerly all-white job. Such a situation frequently requires extra support and sympathy from management.

Title VII requires an employer to maintain a working environment free of racial intimidation. That requirement includes positive action when necessary to redress or eliminate employee intimidation.

Age Limit on Promotions

When Blacks have been passed over in the past for promotions, it may be regarded as unlawful to disqualify them from current openings because of age.

Where an employer has not employed Blacks in a given job classification in the past and where that employer now continues to refuse to employ in that position a black employee of long and relevant service based upon an age standard, the Commission will find a violation in the absence of a clear and convincing showing that the age standard is reasonably necessary to the normal and efficient operation of the job in question.

Work Assignments

It is unlawful to give minority group employees a disproportionately large share of the dirtier jobs, less favorable hours, dead-end or low skill jobs, etc.

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Recreational Activities

If an employer contributes financial assistance or other support to employee recreational or social activities, Title VII requires that the activity be open on an integrated basis. This includes company Christmas parties and dances, bowling leagues, baseball teams, bridge clubs, etc.

Manner of Address

A violation may be found if supervisors adopt different approaches in addressing employees based on race, religion, sex, or national origin, such as where white employees generally are called, "Mr. or Mrs." but Blacks are called by their first names or are referred to as "boy" or "girl".

Segregated Facilities

Many problems involve segregated facilities such as drinking fountains, locker rooms, employee entrances, infirmaries, segregated housing, etc. Integration of previously segregated facilities frequently is not enough. The employer also may be required to take steps to encourage Blacks to use the desegregated facilities or to prevent whites from intimidating Blacks in the use of such facilities.

No general answer can be given with regard to permitting employees "freedom of choice" to choose lockers or other facilities. But experience has shown that where compulsory segregation is replaced by "freedom of choice," subtle ways often are used to prevent a choice that would disturb the preexisting segregated pattern. Therefore, an employer who maintained segregated facilities in the past should take positive steps to prevent the pattern or segregation from continuing.

Harassment by Employees

If harassment of a minority group employee by his co-workers or supervisor occurs, management has an obligation to attempt to remedy the situation.

The announcement of a policy against racial discrimination is not sufficient when management has reason to believe that racial discrimination is occurring. Management must take steps to insure that the policy is observed at all levels.

Employer Reprisal

An employer may violate Title VII by taking reprisals against employees who initiate Title VII proceedings against it.

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Discharge for Garnishments

Employers also may violate Title VII by discharging minority group employees for incurring a number of wage garnishments or bad debts.

Grooming Rules

An employer's grooming rules should take into consideration racial differences.

EEOC has held that the application of the "line of sight" hair grooming policy to all employees, without regard to their racially different physiological and cultural characteristics, tends to affect Blacks adversely, because they have a texture of hair different from that of Caucasians. Thus Blacks are measured against a standard that assumes non-Black hair characteristics. Caucasian employees wearing beards and long sideburns are not usually reprimanded and the wearing of an “Afro”" has been appropriated as a cultural symbol by members of the Black race so as to make its suppression an automatic badge of racial prejudice.

Seniority Systems

A seniority system must eliminate the forbidden consequences of the old and admittedly discriminatory seniority system, but, at the same time, care should be taken not to bestow preferential treatment upon one race.

The law should be construed to prohibit the future awarding of vacant jobs on the basis of a seniority system that "locks in" prior racial classification. White incumbent workers should not be bumped out of their present positions by Blacks with greater seniority. Seniority consideration should be asserted only with respect to new job openings.

SEX DISCRIMINATION

It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or seniority lists based on sex, where this would adversely affect any employee, unless sex is a bona fide occupational qualification for that job. Additionally, advertising in "male" and "female" help wanted columns is unlawful, unless sex is a bona fide occupational qualification.

Any laws or policy that limit the employment of females in certain occupations; in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits; during certain hours of the night; for more than a specified number of hours per day or per week; or, for certain periods of time before and after childbirth conflict with and are superseded by Title VII. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

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Rules that limit or restrict the employment of married women and are not applicable to married men constitute discrimination based on sex and is a violation of Title VII.

An employer may not discriminate between men and women with regard to "fringe benefits," including medical, hospital, accident, life insurance and retirement benefits, profit sharing, and bonus plans. Additionally, conditioning the benefits available to employees and their spouses on whether the employee is the "head of the household" or "principal wage earner" will be found a prima facie violation of the prohibitions against sex discrimination, since such status bears no relationship to job performance.

It is unlawful for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for husbands and families of female employees; it also is unlawful to make available benefits for the wives of male employees that are not made available to female employees, or to make available benefits for the husbands of female employees that are not available to male employees.

An employment policy that excludes from employment applicants or employees because of pregnancy (married or unwed) is in prima facie violation of Title VII.

Occupational Qualification

An employer is permitted to label certain occupations as "male" jobs or "female" jobs where sex is a bona fide occupational qualification. But exception to the general ban on sex discrimination should be construed narrowly. It would not include as bona fide occupational qualifications in these situations:

A refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics or women in general. For example, the assumption that women have a higher turnover rate than men.

A refusal to hire based on stereotyped characterizations of the sexes, such as men are less capable of assembling intricate equipment, or women are less capable of aggressive salesmanship.

A refusal to hire because of the preferences of co-workers, the employer, clients, or customers (except where it is necessary for the purpose of authenticity or genuineness, such as the preference for actresses to play female part.)

RELIGIOUS DISCRIMINATION

An employer has the obligation to make "reasonable accommodation" to the religious needs of his employees, where such accommodations do not force undue hardship on the employer.

The employer must prove that such religious accommodations cause undue hardship to his business.

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Because of the "varied religious practices of the American people," the Commission will consider each case of religious discrimination on an individual basis. The 1972 amendments to Title VII added a new section defining "religion" to include all aspects of religious observance, practice, and belief so as to require employers to make reasonable accommodation for employees whose "religion" may include observances, practices, and beliefs such as sabbath observance, that differ from the employer's or the potential employer's requirements regarding standards, schedules, or other business-related conditions.

ADMINISTRATIVE PROCEEDINGS AND ENFORCEMENT

The five-member Equal Employment Opportunity Commission is given the job of administering Title VII of the Civil Rights Act. EEOC initially was given virtually no enforcement powers. Under the 1972 amendments, however, the Commission is authorized to initiate court actions against violators if it is unsuccessful in obtaining voluntary compliance through mediation and conciliation.

Two methods are available for instituting an administrative proceeding before EEOC:

A charge may be filed in writing and under oath by or on behalf of a person claiming to be aggrieved.

A written charge may be filed by a member of the Commission who has reasonable cause to believe that a violation has occurred.

Procedure

A charge must be filed within 180 days after the occurrence of an alleged unlawful employment practice.

After a charge is filed, the Commission must serve a notice **of the charge** on the respondent within 10 days.

The Commission must then investigate the charge after which it must make a determination whether there is reasonable cause to believe that the charge is true. The Commission must make its determination of reasonable cause as promptly as possible and, so far as practicable, within 120 days.

If it finds no reasonable cause, the Commission must dismiss the charge; if it finds reasonable cause, it will attempt to conciliate the case.

If the Commission is unable to secure a conciliation agreement that is acceptable to the Commission, it may bring a civil action, through the U. S. Attorney General, in an appropriate U. S. district court.

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EEOC CONCILIATION

Title VII places great emphasis on conciliation of charges of discrimination. For this purpose, the law allows 30 days for the Equal Employment Opportunity Commission to work out a conciliation agreement between the parties before a suit may be brought. Nothing said or done during the Commission's attempts to achieve voluntary compliance may be made public or may be used as evidence in a subsequent court suit without the written consent of the parties.

Conciliation Process

After the Commission decides that there is cause to believe that discrimination has occurred, the Director of Compliance notifies the charging party and alleged discriminator that a conciliator will contact them to resolve the dispute. The conciliator first meets with the charging party to determine what remedy would be satisfactory to the charging party. The conciliator then tries to persuade the respondent to accept a remedy that is acceptable to the charging party and the Commission. Upon acceptance by the respondent, the remedy is recorded in a conciliation agreement that is signed by the charging party and the respondent, and then submitted to the Commission for its approval.

Conciliation Agreements

Besides remedying the charging party's individual complaint, the Commission normally attempts to include in the conciliation agreement modification of other employment practices to bring them into compliance with Title VII. Successful conciliation agreements often result in changing policies or practices not mentioned in the original complaint, and may affect any persons in addition to the one who filed the complaint.

JUDICIAL PROCEEDINGS

Prior to the 1972 amendments, court enforcement of the no-discrimination requirements of Title VII was left primarily to private actions by the aggrieved individuals. EEOC's role was confined to the informal methods of conference, conciliation, and persuasion.

Under the 1972 amendments, EEOC, if it is unable to secure an acceptable conciliation agreement within 30 days after the filing of the charge, may bring an action against the respondent. In cases against a state or local government, the U.S. Attorney General, rather than EEOC, is authorized to bring the action. The individual also retains the right to bring a court action if he is dissatisfied with EEOC's handling of the case.

Actions by EEOC

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EEOC's initial efforts are directed at conciliating the case. If the Commission is unable to secure a conciliation agreement satisfactory to the Commission within 30 days after the filing of the charge, it may bring a civil action against the respondent.

Actions by Attorney General

In cases against a state or local government, the U.S. Attorney General, rather than EEOC, is authorized to bring the action. In such cases, EEOC notifies the U. S. Attorney General of the failure of conciliation efforts.

Pattern or Practice Cases

A pattern or practice case would be present only when the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature. There would be a “pattern or practice" if, for example, a number of companies or persons in the same industry or line of business discriminate, if a chain of motels or restaurants practiced racial discrimination throughout all or a significant part of its system, or if a company repeatedly and regularly engaged in acts prohibited by the statue.

Under the 1964 Civil Rights Act, the Attorney General was given authority to seek an injunction where he had reasonable cause to believe that individuals were engaged in a "pattern or practice of resistance" to the rights protected by Title VII. The 1972 amendments provide for the transfers of this “pattern or practice" jurisdiction to the EEOC two years after the enactment of the law. In the interim, the Commission and the Attorney General have concurrent jurisdiction in this area.

A three-judge court may be requested upon certification that the case is of general importance. Such a case must be assigned for hearing at the earliest practicable date and must be expedited in every way. Appeals from the judgment of such a court may be made directly to the Supreme Court.

If a three-judge court is not requested, the chief judge of the district immediately must designate a judge in the district to hear and determine the case. If no district judge is available, another district judge or circuit judge can be designated. Such a case shall be heard as soon as possible and be expedited in every way.

Actions by Individuals

Where, in the view of the complaining party, EEOC has not pursued his complaint with satisfactory speed or has entered into an agreement that is unsatisfactory to him, he has an opportunity to seek his own court remedy.

If EEOC dismisses a charge, or, if within 180 days of the charge's filing, EEOC has neither issued a complaint nor entered into a conciliation or settlement agreement that is acceptable to

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EEOC and the complaining party, it notifies him, and he may bring an action in a U. S. district court on his own within the next 90 days.

In such private actions, the courts are authorized at the complainant's request to appoint an attorney and to commence the action without payment of fees. The U. S. Attorney General is authorized to intervene in these private actions if it is certified that the action is of general public importance.

JUDICIAL RELIEF

If a court finds that a respondent is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful employment practice and grant such affirmative relief as it may deem appropriate including, but not limited to, reinstatement with or without back pay. Back pay is limited under the 1972 amendments to no more than that accrued during the two years prior to the filing of a charge.

In addition to injunctions and affirmative relief, the court may award a reasonable attorney's fee as part of the costs.

An attorney's fee awarded to a charging party may be based upon that portion of the case in which he and those in his class prevailed.

RECORDS AND REPORTS

Every employer subject to Title VII is required (1) to make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed and (2) to preserve such records for such periods as the Equal Employment Opportunity Commission prescribes by regulation or order. It also requires employers that control apprenticeship or training programs to maintain detailed records on applicants and how they are selected.

Employer Records - Regulations

Any personnel or employment record made or kept by a political jurisdiction (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the political jurisdiction for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later.

In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 **years from the date of** termination.

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Where a charge of discrimination has been filed, or an action brought by the Attorney General against a political jurisdiction under Title VII, the respondent political jurisdiction shall preserve all personnel records relevant to the charge **or action until final disposition of the** charge or **the action.** The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected.

The above requirements **shall not** apply to application forms and other preemployment records of applicants for positions known to applicants to be of a temporary or seasonal nature.

Title VII gives the Commission access to, and the right to copy, any “evidence” of a person being proceeded against or investigated. The right to copy, however, is limited to evidence that relates to unfair employment practices and that is relevant to a charge under investigation by the Commission.

It is unlawful for EEOC to make public any information obtained from the records that are required to be kept.

Apprenticeship or Training Program Records

Employers that control apprenticeship or training programs are required to maintain a list of applicants who wish to participate in such programs. Persons covered by the law, but not subject to filing Apprenticeship Information Reports, must keep the list for two years. All persons required to file an Apprenticeship Report must keep the list for two years or the period of a successful applicant's apprenticeship, whichever is longer.

The list must be kept in the chronological order in which the applications are received, and must include the address of each applicant, a notation of his or her sex, and identification, as Blacks, "Spanish American,” "Oriental," "American Indian," or "Other.” In addition to the chronological list, employers must keep any other records such as test papers completed by the applicants and records of interviews with applicants for a period of two years.

BASIC REPORTING REQUIREMENTS

EEO-4 Employer Report

The Equal Employment Opportunity Commission requires that a "State and Local Government Information Report, Form EEO-4,” shall be filed with the Commission on or before July 30th each year. This information, on employees subject to the Personnel Act, is furnished to the Commission by the Office of State Personnel, using a computerized system which is updated on the basis of daily personnel transactions processed through the Office of State Personnel. In

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accordance with EEOC requirements, the EE0-4 report submitted by the State does not include employees subject to the State Personnel Act in the institutions of higher education, or employees in local government such as Health, Social Services, etc.

Each of the major State departments are furnished a report containing the information included in the EEO-4 report as pertains to their department.

POSTING OF PRESCRIBED NOTICE

The Equal Employment Opportunity Commission is authorized to require the posting of a prescribed notice setting forth excerpts of summaries of pertinent provisions of the Act and information pertinent to the filing of a complaint. The notice is required to be posted by every employer or employment agency.

Such notices must be posted in a conspicuous place where notices to employees and applicants for employment are posted customarily. Willful violation of the posting requirement is punishable by a **fine of not more than** $100 for each separate offense.

Effective March 24, 1972

Federal Hatch Political Activities Act as Amended: 5 U.S.C. 1502(a)(3) and 1503

151.101 Definitions

In this part:

a) "State" means a State or territory or possession of the United States;

b) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

c) "Federal agency" means an executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System;

d) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States of a Federal agency but does not include:

   1) An individual who exercises no functions in connection with that activity;

   2) An individual employed by an educational or research institution, establishment, agency or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

e) "Political party" means a National party, a State political party, and an affiliated organization;

f) "Election" includes a primary, special, and general election.

g) "Nonpartisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party and of whose candidates for Presidential electors received votes in the last preceding election at which Presidential electors were selected.

h) "Partisan" when used as an adjective refers to a political party.

i) "Elective office means any office which is voted upon at an election as defined in Paragraph 151.101(f), above, but does not include political party office.

151.111 Permissible activities

All State or local officers or employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this part. A State or local officer or employee may participate in all political activity not specifically restricted by law and this part; including candidacy for office in a nonpartisan election, and candidacy for political party office.

151.121 Use of official authority; coercion; candidacy; prohibitions

A State or local officer or employee may not -

a) Use his official authority of influence for the purpose of interfering with or affecting the result of an election or a nomination for office; or

b) Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose.

c) Be a candidate for elective public office in a partisan election.

Federal Hatch Political Activities Act as Amended: 5 U.S.C. 1502(a)(3) and 1503

1151.122 Candidacy; exceptions	Sections 151.121(c) does not apply to – a) The Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor; b) The Mayor of a city; c) A duly elected head of an executive department of a State or municipality who is not classified under a state or municipal merit of civil service system; d) An individual holding elective office; or e) Activity in connection with a nonpartisan election; or f) Candidacy for a position of officer of a political party, delegate to a political party convention, member of a National, state, or local committee of a political party, or any similar position.

State Employees Workplace Requirements Program for Safety and Health - Chapter 143, Article 63

143—580 Definition

As used in this Article, 'State Agency' means any department, commission, division, board, or institution of the State within the executive branch of government and the Office of Administrative Hearings.

143-581 Program goals

Each State agency shall establish a written program for State employee workplace safety and health. The program shall promote safe and healthful working conditions and shall be based on clearly stated goals and objectives for meeting the goals. The program shall provide managers, supervisors, and employees with a clear and firm understanding of the State's concern for protecting employees from job-related injuries and health impairment; preventing accidents and fires; planning for emergencies and emergency medical procedures; identifying and controlling physical, chemical, and biological hazards in the workplace; communicating potential hazards to employees; and assuring adequate housekeeping and sanitation.

143-582 Program Requirements

The written program required under this Article shall describe at a minimum:

1) The methods to be used to identify, analyze, and control new or existing hazards, conditions, and operations.
2) How managers, supervisors, and employees are responsible for implementing the program, controlling accident-related expenditures, and how continued participation of management and employees will be established, measured, and maintained.
3) How the plan will be communicated to all affected employees so that they are informed of work-related physical, chemical, or biological hazards, and controls necessary to prevent injury or illness.
4) How managers, supervisors, and employees will receive training in avoidance of job-related injuries and health impairment.
5) How workplace accidents will be reported and investigated and how corrective actions will be implemented.
6) How safe work practices and rules will be communicated and enforce.
7) The safety and health training program that will be made available.
8) How employees can make complaints concerning safety and health problems without fear of retaliation.

How employees will receive attention following a work-related injury or illness.

143-583 Model program; technical assistance; reports

a) The State Personnel Commission, through the Office of State Personnel, shall:
    1) Maintain a model program of safety and health requirements to guide State agencies in the development of their individual programs and in complying with the provisions of G.S. 95-148 and this Article.
    2) Establish guidelines fro the creation and operation of State agency safety and health committees.

State Employees Workplace Requirements Program for Safety and Health - Chapter 143, Article 63

b) The Office of State Personnel shall:
   1) Provide consultative and technical services to assist State agencies in establishing and administering their workplace safety and health programs and to address specific technical problems.
   2) Monitor compliance with this Article.

c) The State Personnel Commission shall report annually to the Joint Legislative Commission on Governmental Operations on the safety and health activities of State agencies, compliance with this Article, and the fines levied against State agencies pursuant to Article 16 of Chapter 95 of the General Statutes.

143-584 State agency safety and health committees

Each state agency shall create, pursuant to guidelines adopted under subsection (a) of G.S. 143-583, safety and health committees to perform workplace inspections, review injury and illness records, make advisory recommendations to the agency's managers, and perform other functions determined by the State Personnel Commission to be necessary for the effective implementation of the State Employees Workplace Requirements Program for Safety and Health.

Chapter 128-15 Article I

Employment Preference for Veterans and Their Spouses or Surviving Spouses

a) It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment with every State department, agency, and institution.

b) As used in this section:
   1) A 'period of war' includes World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 11946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.
   2) 'Veteran' means a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.
   3) 'Eligible veteran means:
   a. A veteran who served during a period of war; or
   b. The spouse of a disabled veteran; or
   c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as a result of such service; or
   d. A veteran who suffered a disabling injury for service-related reasons during peacetime; or
   e. The spouse of a veteran described in subdivision d. of this subsection; or
   f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who died for service-related reasons during peacetime.

Chapter 128-15 Article I (continued)

c) Hereafter, in all evaluations of applicants for positions with this State or any of its departments, institutions or agencies, a preference shall be awarded to all eligible veterans who are citizens of the state and who served the State or the United States honorably in either the army, navy, marine corps, nurses' corps, air corps, air force, coast guard, or any of the armed services during a period of war.

d) The provisions of this section shall be subject to the provisions of Article 1 of Chapter 165 of the General Statutes, and Parts 13 and 19 of Article 9 of Chapter 143B of the General Statutes.

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