

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 495
RATIFIED BILL

AN ACT ENHANCING THE EFFECTIVENESS AND EFFICIENCY OF STATE GOVERNMENT BY MODERNIZING THE STATE'S SYSTEM OF HUMAN RESOURCES MANAGEMENT.

The General Assembly of North Carolina enacts:

PART I. CAREER STATE EMPLOYEES

SECTION 1. G.S. 126-1.1 reads as rewritten:

"§ 126-1.1. Career State employee defined.

(a) 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,~~ position with a permanent 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 North Carolina Human Resources Act for the immediate ~~24~~ 12 preceding months.

(b) As used in this Chapter, "probationary State employee" means a State employee who is in a probationary appointment and is exempt from the provisions of the North Carolina Human Resources Act only because the employee has not been continuously employed by the State for the time period required by subsection (a) or (c) of this section.

(c) Notwithstanding the provisions of subsection (a) above, employees who are hired by a State agency, department or university in a sworn law enforcement position and who are required to complete a formal training program prior to assuming law enforcement duties with the hiring agency, department or university shall become career State employees only after being employed by the agency, department or university for 24 continuous months."

PART II. STATE HUMAN RESOURCES COMMISSION CHANGES

SECTION 2. G.S. 126-4 reads as rewritten:

"§ 126-4. Powers and duties of State Human Resources Commission.

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

- (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.~~

...."

PART IV. OTHER MODERNIZING AND CONFORMING CHANGES

SECTION 4. G.S. 126-6.2(a) reads as rewritten:

"(a) Beginning January 1, 1998, and ~~quarterly~~ annually thereafter, the head of each State agency, department, or institution employing State employees subject to the North Carolina Human Resources Act shall report to the Office of State Human Resources 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) Any other human resources functions or actions as may be requested by the Director of the Office of State Human Resources in order for the Office to evaluate the efficiency, productivity, and compliance of a State agency, department, or institution with policies, including, but not limited to, the compensation of State employees, voluntary shared-leave programs, equal employment opportunity plans and programs, and work options programs."

PART V. ORGANIZATIONAL AND EMPLOYEE POLICY CHANGES

SECTION 5.1. G.S. 126-7.1 reads as rewritten:

"§ 126-7.1. Posting requirement; State employees receive priority consideration; reduction-in-force; Work First ~~hiring~~ hiring; reorganization through reduction.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted in a place readily accessible to employees 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 also be listed on a website maintained by the Office of State Human Resources for the purpose of informing current State employees and the public of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Human Resources to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Human Resources 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.

(b) 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.

(c) The State Human Resources Commission shall adopt rules ~~to provide that~~ governing the priority and salary rights of State employees separated from State employment as the result of reductions in force who accept a position in State government ~~to provide that the employee~~ shall be paid a salary no higher than the maximum of the salary grade of the position accepted.

(d) 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.

(e) 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.

(f) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:

- (1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and
- (2) Has substantially equal qualifications as any other applicant;

then within all State agencies, the State employee who has been notified of or separated due to a reduction in force shall receive priority consideration over all other applicants. This priority shall remain in effect for a period of 12 months from the date the employee receives

notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal.

(f1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force accepts or rejects an offer for a position of State employment that is equal to or higher than the position held or equal to or higher than the salary earned by the employee at the time of separation or notification, then the employee's acceptance or rejection of that offer shall satisfy and terminate the one-time, 12-month priority granted by subsection (f) of this section.

(f2) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force and who applies for a position equal to or higher than the position held by the employee at the time of separation or notification, but declines an interview for the position for which the employee applied, then the employee's rejection of an offer of the interview for the position shall satisfy and terminate the one-time, 12-month priority granted by subsection (f) of this section. The State Human Resources Commission shall adopt a policy to carry out this subsection.

(g) "Qualifications" within the meaning of subsection (e) of this section shall consist of:

- (1) Training or education;
- (2) Years of experience; and
- (3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for.

(h) 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.

(i) 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.

(j) A department or office listed in G.S. 126-5(d)(1) or (2) may reorganize and restructure its positions through a voluntary separation process, in accordance with a policy approved by the State Human Resources Commission and subject to funding and approval by the Office of State Budget and Management."

SECTION 5.2. G.S. 126-8.1(c) reads as rewritten:

"(c) ~~The Department of Administration~~ Office of State Human Resources 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."

SECTION 5.3. G.S. 126-14.2 reads as rewritten:

"§ 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 the most qualified person 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"~~ "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 Human Resources Commission.

(c) It is a violation of this section 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)."

SECTION 5.5. G.S. 126-24 reads as rewritten:

"§ 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;
- (2a) A potential State or local government supervisor, during the interview process, only with regard to performance management documents;
- (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 therefor 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."

PART VI. EFFECTIVE DATE

SECTION 6. Part I of this act becomes effective October 1, 2015, and applies to employees hired before, on or after that date. Part V of this act becomes effective October 1, 2015, and applies to employees separated on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of September, 2015.

s/ Brent Jackson
Presiding Officer of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

Pat McCrory
Governor

Approved _____m. this _____ day of _____, 2015