

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 122

Short Title: Career State Employees Under Act.

(Public)

Sponsors: Senator Johnson.

Referred to: State Personnel and State Government.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO DEFINE "CAREER STATE EMPLOYEE" AND TO ESTABLISH A DIFFERENT SET OF CRITERIA FOR DETERMINING WHETHER A STATE EMPLOYEE IS SUBJECT TO CHAPTER 126 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. A new section to follow G.S. 126-1 is added to Article 1 of Chapter 126 of the General Statutes to read:

**"§ 126-1A. Career State employee defined.**

For the purpose of this Chapter, unless the context indicates otherwise:

(1) 'Career State employee' means a State employee

a. In a primary level position who has been continuously employed by the State of North Carolina for the immediate 12 preceding months;

b. In a secondary level or professional position who has been continuously employed by the State of North Carolina for the immediate 24 preceding months; or

c. In a management level or consultant position who has been continuously employed by the State of North Carolina for the immediate 36 preceding months.

(2) A 'primary level position' means a position which is nonsupervisory in nature. A primary level position may be responsible for making work assignments to other positions, but the majority of the duties and responsibilities of the position are nonsupervisory.

- 1           (3) A 'secondary level position' means a position in which the majority of  
2 the work performed is directing the work of other positions. A  
3 secondary level position has the authority to assign work and to  
4 evaluate work; to hire employees; to discipline or dismiss employees;  
5 or has significant input into such actions.
- 6           (4) A 'professional position' means a position in which the work requires  
7 knowledge of an advanced type in a field of science or learning  
8 customarily acquired by a prolonged course of specialized intellectual  
9 instruction and study, as distinguished from a general academic  
10 education, and requires the consistent exercise of discretion and  
11 judgment. The majority of the duties and responsibilities of such a  
12 position are nonsupervisory.
- 13           (5) A 'management level position' means a position which manages an  
14 established division or subdivision of a department, agency or  
15 institution; which directs the work of one or more secondary level  
16 employees; which has the authority to hire, reward, discipline, or  
17 discharge employees; and which may provide suggestions for changes  
18 in policy to senior executives with policy-making authority.
- 19           (6) A 'consultant position' means a position in which the work requires  
20 knowledge in a specialized field. A consultant position customarily  
21 exercises discretion and independent judgment and provides research,  
22 guidance, and recommendations on policy matters to senior executives  
23 with policy-making authority."

24           Sec. 2. G.S. 126-4 reads as rewritten:

25 **"§ 126-4. Powers and duties of State Personnel Commission.**

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

- 28           (1) A position classification plan which shall provide for the classification  
29 and reclassification of all positions subject to this Chapter according to  
30 the duties and responsibilities of the positions.
- 31           (2) A compensation plan which shall provide for minimum, maximum,  
32 and intermediate rates of pay for all employees subject to the  
33 provisions of this Chapter.
- 34           (3) For each class of positions, reasonable qualifications, as to age,  
35 character, physical condition, and other attributes pertinent to the work  
36 to be performed.
- 37           (4) A recruitment program to attract applicants to public employment and  
38 determine the relative fitness of applicants for the respective positions.
- 39           (5) Hours and days of work, holidays, vacation, sick leave, and other  
40 matters pertaining to the conditions of employment. The legal public  
41 holidays established by the Commission as paid holidays for State  
42 employees shall include Martin Luther King, Jr.'s, Birthday for all  
43 years after 1987. Provided, however, that the Commission shall not  
44 provide for a greater number of total paid holidays than were

1 established for the year 1986. The Commission shall not delete  
2 Veterans Day as a holiday.

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

4 (7) Cooperation with the Department of Public Instruction, the State  
5 Board of Education, the Board of Governors of the University of North  
6 Carolina, and the colleges and universities of the State in developing  
7 pre-service and in-service training programs.

8 (7a) The separation of employees.

9 (8) The evaluation of employee performance, the granting of salary  
10 increments, and a program of meritorious service awards.

11 (9) The investigation of complaints and the issuing of such binding  
12 corrective orders or such other appropriate action concerning  
13 employment, promotion, demotion, transfer, discharge, and  
14 reinstatement in all cases as the Commission shall find justified.

15 (10) Such other programs and procedures as may be necessary to promote  
16 efficiency of administration and provide for a fair and reasonable  
17 system of personnel administration. This subdivision may not be  
18 construed to authorize the establishment of an incentive pay program.

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

24 (14) The implementation of G.S. 126-5(e).

25 (15) Recognition of State employees, public personnel management, and  
26 management excellence.

27 Such policies and rules shall not limit the power of any elected or appointed  
28 department head, in his discretion and upon his determination that it is in the best  
29 interest of the Department, to transfer, demote, or separate a State

30 (1) Employee in a ~~grade 60 or lower primary level~~ position who has not  
31 been continuously employed by the State of North Carolina for the  
32 immediate 12 preceding months;

33 (2) Employee in a ~~grade 61 to grade 65 secondary level or professional~~  
34 position who has not been continuously employed by the State of  
35 North Carolina for the immediate ~~36-24~~ preceding months; or

36 (3) Employee in a ~~grade 66 to grade 70 management level or consultant~~  
37 position who has not been continuously employed by the State of  
38 North Carolina for the immediate ~~48-36~~ preceding months; ~~or months.~~

39 (4) ~~Employee in a grade 71 or higher position who has not been~~  
40 ~~continuously employed by the State of North Carolina for the~~  
41 ~~immediate 60 preceding months."~~

42 Sec. 3. G.S. 126-5(c) reads as rewritten:

43 "**§ 126-5. Employees subject to Chapter; exemptions.**

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

- 5 (1) ~~An employee of the State of North Carolina~~ A State employee who:  
6 a. Is in a ~~grade 60 or lower~~ primary level position and has not been  
7 continuously employed by the State of North Carolina for the  
8 immediate 12 preceding months;  
9 b. Is in a ~~grade 61 to grade 65~~ secondary level or professional  
10 position and has not been continuously employed by the State  
11 of North Carolina for the immediate ~~36~~ 24 preceding months; or  
12 c. Is in a ~~grade 66 to grade 70~~ management level or consultant  
13 position and has not been continuously employed by the State  
14 of North Carolina for the immediate ~~48~~ 36 preceding ~~months; or~~  
15 months.  
16 d. ~~Is in a grade 71 or higher position and has not been~~  
17 ~~continuously employed by the State of North Carolina for the~~  
18 ~~immediate 60 preceding months.~~
- 19 (2) One confidential assistant and two confidential secretaries for each  
20 elected or appointed department head and one confidential secretary  
21 for each chief deputy or chief administrative assistant.
- 22 (3) Employees in policymaking positions designated as exempt pursuant  
23 to G.S. 126-5(d).
- 24 (4) The chief deputy or chief administrative assistant to the head of each  
25 State department who is designated either by statute or by the  
26 department head to act for and perform all of the duties of such  
27 department head during his absence or incapacity."

28 Sec. 4. G.S. 126-34 reads as rewritten:

29 **"§ 126-34. Grievance appeal for career State employees.**

30 Any ~~permanent~~ career State employee having a grievance arising out of or due to his  
31 employment and who does not allege discrimination because of his age, sex, race, color,  
32 national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or  
33 political affiliation shall first discuss his problem or grievance with his supervisor and  
34 follow the grievance procedure established by his department or agency."

35 Sec. 5. G.S. 126-35 reads as rewritten:

36 **"§ 126-35. Written statement of reason for disciplinary action.**

37 (a) No ~~permanent~~ career State employee subject to the State Personnel Act shall  
38 be discharged, suspended, or reduced in pay or position, except for just cause. In cases  
39 of such disciplinary action, the employee shall, before the action is taken, be furnished  
40 with a statement in writing setting forth in numerical order the specific acts or omissions  
41 that are the reasons for the disciplinary action and the employee's appeal rights. The  
42 employee shall be permitted 15 days from the date the statement is delivered to appeal  
43 to the head of the department. A copy of the written statement given the employee and  
44 the employee's appeal shall be filed by the department with the State Personnel Director

1 within five days of their delivery. However, an employee may be suspended without  
2 warning for causes relating to personal conduct detrimental to State service, pending the  
3 giving of written reasons, in order to avoid undue disruption of work or to protect the  
4 safety of persons or property or for other serious reasons. The employee, if he is not  
5 satisfied with the final decision of the head of the department, or if he is unable, within  
6 a reasonable period of time, to obtain a final decision by the head of the department,  
7 may appeal to the State Personnel Commission. Such appeal shall be filed not later than  
8 30 days after receipt of notice of the department head's decision.

9 (b) Notwithstanding any other provision of this Chapter, a reduction in pay or  
10 position which is not imposed for disciplinary reasons shall not be considered a  
11 disciplinary action within the meaning of this Article. Disciplinary actions, for the  
12 purpose of this Article, are those actions taken in accordance with the disciplinary  
13 procedures adopted by the State Personnel Commission and specifically based on  
14 unsatisfactory job performance, unacceptable personal conduct or a combination of the  
15 two.

16 (c) For the purposes of contested case hearings under Chapter 150B, an  
17 involuntary separation (such as a separation due to a reduction in force) shall be treated  
18 in the same fashion as if it were a disciplinary action.”

19 Sec. 6. G.S. 126-36 reads as rewritten:

20 **"§ 126-36. Appeal of unlawful State employment practice.**

21 Any career State employee or former career State employee who has reason to  
22 believe that employment, promotion, training, or transfer was denied him or that  
23 demotion, layoff or termination of employment was forced upon him in retaliation for  
24 opposition to alleged discrimination or because of his age, sex, race, color, national  
25 origin, religion, creed, political affiliation, or handicapped [handicapping] condition as  
26 defined by G.S. 168A-3 except where specific age, sex or physical requirements  
27 constitute a bona fide occupational qualification necessary to proper and efficient  
28 administration, shall have the right to appeal directly to the State Personnel  
29 Commission."

30 Sec. 7. G.S. 126-36.2 reads as rewritten:

31 **"§ 126-36.2. Appeal to Personnel Commission by career State employee denied  
32 notice of vacancy or priority consideration.**

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

- 35 (1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;  
36 (2) Give him priority consideration pursuant to G.S. 126-7.1(c) may appeal  
37 directly to the State Personnel Commission."

38 Sec. 8. G.S. 126.39 reads as rewritten:

39 **"§ 126-39. ~~State employee defined.~~ Scope of this Article.**

40 ~~For the purposes of this Article, except~~ Except for positions subject to competitive  
41 service and except for appeals brought under G.S. 126-16 and 126-25, ~~the terms~~  
42 "permanent State employee," "permanent employee," "State employee" or "former State  
43 employee" as used in this Article shall mean a person

- 1           (1) ~~In a grade 60 or lower position who has been continuously employed~~  
2           ~~by the State of North Carolina for the immediate 12 preceding months;~~  
3           (2) ~~In a grade 61 to grade 65 position who has been continuously~~  
4           ~~employed by the State of North Carolina for the immediate 36~~  
5           ~~preceding months;~~  
6           (3) ~~In a grade 66 to grade 70 position who has been continuously~~  
7           ~~employed by the State of North Carolina for the immediate 48~~  
8           ~~preceding months; or~~  
9           (4) ~~In a grade 71 or higher position who has been continuously employed~~  
10          ~~by the State of North Carolina for the immediate 60 preceding months~~

11 this Article applies to all State employees who are career State employees at the time of  
12 the act, grievance, or employment practice complained of."

13           Sec. 9. The Office of State Personnel shall adopt rules to implement this act.

14           Sec. 10. This act becomes effective July 1, 1993, and applies to all State  
15 employees hired on or after that date.