

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 354
SENATE BILL 122

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.
- (3) A 'secondary level position' means a position in which the majority of the work performed is directing the work of other positions. A secondary level position has the authority to assign work and to evaluate work; to hire employees; to discipline or dismiss employees; or has significant input into such actions.
- (4) A 'professional position' means a position in which the work requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, and requires the consistent exercise of discretion and judgment. The majority of the duties and responsibilities of such a position are nonsupervisory.

- (5) A 'management level position' means a position which manages an established division or subdivision of a department, agency or institution; which directs the work of one or more secondary level employees; which has the authority to hire, reward, discipline, or discharge employees; and which may provide suggestions for changes in policy to senior executives with policy-making authority.
- (6) A 'consultant position' means a position in which the work requires knowledge in a specialized field. A consultant position customarily exercises discretion and independent judgment and provides research, guidance, and recommendations on policy matters to senior executives with policy-making authority."

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

"§ 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) A position classification plan 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) A compensation plan 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 age, character, physical condition, and other attributes pertinent to the work to be performed.
- (4) A recruitment program to attract applicants to public employment 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 for all years after 1987. Provided, however, that the Commission shall not provide for a greater number of total paid holidays than were established for the year 1986. The Commission shall not delete Veterans Day as a holiday.
- (6) The appointment, promotion, transfer, demotion and suspension.
- (7) Cooperation with the Department of Public Instruction, the State Board of Education, the Board of Governors of the University of North Carolina, and the colleges and universities of the State in developing pre-service and in-service training programs.
- (7a) The separation of employees.
- (8) The evaluation of employee performance, the granting of salary increments, and 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, and reinstatement in all cases as the Commission shall find justified.

- (10) Such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and reasonable 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 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.
- (14) The implementation of G.S. 126-5(e).
- (15) Recognition of State employees, public personnel management, and management excellence.

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

- (1) Employee in a ~~grade 60 or lower~~ primary level position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- (2) Employee in a ~~grade 61 to grade 65~~ secondary level or professional position who has not been continuously employed by the State of North Carolina for the immediate ~~36-24~~ preceding months; or
- (3) Employee in a ~~grade 66 to grade 70~~ management level or consultant position who has not been continuously employed by the State of North Carolina for the immediate ~~48-36~~ preceding ~~months; or months.~~
- (4) ~~Employee in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 60 preceding months."~~

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

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

(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) ~~An employee of the State of North Carolina~~ A State employee who:
 - a. Is in a ~~grade 60 or lower~~ primary level position and has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;
 - b. Is in a ~~grade 61 to grade 65~~ secondary level or professional position and has not been continuously employed by the State of North Carolina for the immediate ~~36-24~~ preceding months; or
 - c. Is in a ~~grade 66 to grade 70~~ management level or consultant position and has not been continuously employed by the State

of North Carolina for the immediate ~~48~~ 36 preceding months; ~~or months.~~

~~d. Is in a grade 71 or higher position and has not been continuously employed by the State of North Carolina for the immediate 60 preceding months.~~

- (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 policymaking positions designated as exempt 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."

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

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

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

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

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

(a) No ~~permanent-career State~~ employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, 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. A copy of the written statement given the employee and the employee's appeal shall be filed by the department with the State Personnel Director within five days of their delivery. 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.

(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."

Sec. 6. G.S. 126-36.2 reads as rewritten:

"§ 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."

Sec. 7. G.S. 126-39 reads as rewritten:

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

~~For the purposes of this Article, except~~ Except for positions subject to competitive service and except for appeals brought under G.S. 126-16, ~~and~~ 126-25, and 126-36, the terms "~~permanent State employee,~~" "~~permanent employee,~~" "~~State employee~~" or "~~former State employee~~" as used in this Article shall mean a person

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

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

Sec. 8. The Office of State Personnel shall adopt rules to implement this act.

Sec. 9. This act becomes effective July 1, 1993, and applies to all State employees hired on or after that date.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives