

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION



EMPLOYEE GRIEVANCE POLICY AND PROCEDURES

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POLICY STATEMENT

It is the intent of the North Carolina Department of Transportation to ensure that all employees have access to the Department's Employee Grievance Procedures. These procedures are in compliance with policies of the State Personnel Commission, and will be posted in a conspicuous location at all DOT facilities. It is also available on the website at www.ncdot.org. New employees will be informed of the policy and procedures during employee orientation training sessions. In the event changes are made, these changes will be communicated to all employees.

Secretary
Department of Transportation

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SECTION ONE

INTRODUCTION

I. EMPLOYEE RIGHTS:

A. Definitions:

1. Career State Employee:

A State employee who has been continuously employed by the State of North Carolina in a permanent position subject to the State Personnel Act for the immediate 24 preceding months (See NCGS 126-1.1)

2. Covered Person:

A person eligible to file a grievance under this Policy. The ability of a person to file a grievance will depend on his/her length of service and/or the issue upon which he/she wishes to file a grievance.

B. GRIEVABLE ISSUES AND COVERED PERSONS:

Complaints arising out of or due to employment under N.C.G.S. §126-34 and covered in N.C.G.S. §126-34.1 are grievable as follows:

1. Grievable Issues for Career State Employees or former Career State Employees:

- *Dismissal, demotion or suspension without pay for just cause*
- *Denial of promotion due to failure to post*
- *Failure to give promotional priority over outside applicants*
- *Failure to give RIF reemployment consideration*
- *Failure to give policy-making/confidential exempt status priority reemployment consideration*

2. Grievable Issues for Any State Employee:

- *Failure to follow systematic procedures in reduction in force (not alleging discrimination)*
- *Denial of veteran's preference in connection with RIF*
- *Discrimination in denial of promotion, transfer, or training; or, retaliation in selection for demotion, RIF or termination on account of age, race, sex, color, national origin, religion, creed, political affiliation, or handicapping condition*
- *Denial of request to remove inaccurate or misleading information from personnel file*
- *Policy-making designation*
- *A false accusation about political threats or promises*
- *Any retaliatory personnel action which violates N.C.G.S. § 126-85 ("Whistleblower" statute)*

3. Grievable Issues for Any Applicant for State Employment:

- *Denial of veteran's preference in initial State employment*
- *Denial of employment on the basis of illegal discrimination*

4. Grievable Issue for Any State Employee and Applicant for State Employment:

- *Dissatisfaction with agency decision on reasonable accommodation request*

Advisory Note: 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 file a complaint directly to 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.

In addition to the remedies provided by the State Personnel Act for the above listed claims, employees may have concurrent rights and remedies under the following: The Fair Labor Standards Act (FLSA); The Age Discrimination in Employment Act (ADEA); The Family Medical Leave Act (FMLA); and The Americans with Disabilities Act (ADA), to the extent consistent with those federal laws.

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 N.C.G.S. §126-34.1 shall **not** be grounds for a contested case under Chapter 126.

II. MISCELLANEOUS:

- A. No appeal rights are provided in the agency grievance and appeal procedures for any written warnings, counseling sessions, or supervisory conferences.
- B. No appeal rights are provided in the agency grievance and appeal procedures for denial of promotion based on qualifications.
- C. Lateral transfers made by management are not grievable, unless the grievant is transferred more than 35 miles from his/her workstation or home/residence.
Note: DMV/License and Theft employees should refer to General Order 12. Failure to receive a requested lateral transfer is not grievable except to the extent allowed by N.C.G.S. §126-34.1(a)(2)
a. Any employee transferred more than 35 miles from his/her workstation or home/residence has appeal rights within the Department of Transportation to the Secretary of Transportation.
- D. Any employee who voluntarily resigns from employment with the Department with or without notice has no appeal rights.
- E. Any State employee who is involuntarily separated due to unavailability for work when all applicable leave credits are exhausted has appeal rights within the Department of Transportation to the Secretary of Transportation.
- F. Matters of inherent management decisions are not subject to appeal under this policy. These matters include, but are not limited to, such areas as the programs and functions of the department, standards of service, the overall agency budget, the utilization of technology, and assignment and reassignment of staff positions, duty stations and shifts, except where such transfers include a demotion to a lower classification or a transfer more than 35 miles from the employee's previous workstation or home/residence.
- G. Reduction in Force appeal rights are defined in the Departmental Reduction in Force Policy.
- H. Complaints involving unlawful workplace harassment are defined in the Unlawful Workplace Harassment Policy. Copies of the policy may be found on the NCDOT Human Resources website at <http://www.ncdot.org/services/personnel/>.
- I. Appeal rights and a copy of the Departmental Grievance Procedure must be included in a letter of suspension, demotion or dismissal.
- J. Changes to the NCDOT Internal Grievance Procedures will be communicated to employees within 30 days of the effective date of change.
- K. Grievance Procedures will be posted at all NCDOT facilities.
- L. Employees with questions should contact their Employee Relations Representative.

SECTION TWO

GRIEVANCE PROCEDURES

I. GENERAL:

- A. These procedures are designed to allow and encourage the resolution of all employee grievances at the lowest level in the organizational structure as quickly as possible and with minimal disruption to the work cycle.
- B. Employee grievances within the Department of Transportation include those complaints arising out of or due to employment under N.C.G.S. §126-34 and covered by N.C.G.S. §126-34.1.
- C. A career State employee or former career State employee who has reason to believe that promotion, transfer or training was denied because of age, race, sex, color, national origin, religion, creed, political affiliation, or handicapping condition, or that demotion, layoff, transfer, or termination of employment was forced upon the employee in retaliation for opposition to alleged discrimination may appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings within 30 calendar days of the alleged discriminatory or retaliatory action. Employees appealing through the agency's internal procedure shall comply with the agency timelines.

Note: Grievants may also file a complaint under Title VII with the Equal Employment Opportunity Commission or the Civil Rights Division of the Office of Administrative Hearings within 180 days of the alleged discriminatory or retaliatory action.

- D. Any career State employee who has reason to believe that a promotion was denied due to the alleged failure of the Department of Transportation to post notice of the job vacancy pursuant to N.C.G.S. §126-7.1(a) or to give the employee State employee priority consideration pursuant to N.C.G.S. §126-7.1(c) may appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings within 30 days of notice of the personnel action.
- E. Any State employee who has reason to believe that he or she has been subjected to a false accusation or disciplinary action relating to the employee's alleged violation of N.C.G.S. §126-14 or N.C.G.S. §126-14.1 may appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings within 30 days of notice of the false accusation or disciplinary action.
- F. Any State employee who disputes whether his or her position is properly exempted from the State Personnel Act under N.C.G.S. §126-5 may appeal directly to the State Personnel Commission by filing a petition for contested case hearing with the Office of Administrative Hearings within 30 days of notice of the exempt designation.
- G. Any part-time or full-time temporary, probationary, non-career status or career status employee or applicant for State employment who is dissatisfied with a decision on a request for reasonable accommodation may appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings within 30 days of notice of decision.

II. TIME:

- A. The designated time limits begin the day the written request is stamped "Received" by the Human Resources Director. For purposes of this grievance procedure, where time deadlines are provided, if the deadline for taking an action falls on a weekend or holiday, the deadline shall be the next working day following the weekend or holiday.

- B. When an employee or department action requires a document being sent by mail, 3 days shall be added to the prescribed period. However, time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

III. FILING REQUIREMENTS:

All employee grievances must be filed within 15 calendar days from the date the grievant receives notification of the occurrence, the action, or the situation giving rise to the grievance. Failure of the employee to file a timely grievance relieves the Department of Transportation of any and all liabilities for such occurrence, action, or situation and constitutes a waiver of all grievance rights under this procedure.

An employee who at any step of the grievance process fails to comply with a reasonable request for information, or with any of the procedures set out herein, including failure to appear at a scheduled meeting, conference, or hearing, may be deemed to have abandoned his or her appeal. The acts or omissions of any attorney assisting a grievant shall be deemed those of the grievant for purposes of determining compliance with procedures under this policy.

IV. GRIEVANCE PROCEDURE:

Grievances regarding dismissals shall be filed directly with the Human Resources Director within 15 calendar days from the date that notification of dismissal is received. All other complaints shall first be discussed through the appropriate "chain of command" to determine if the problem can be resolved before a grievance is submitted to the Human Resources Director. If the problem is not resolved through the "chain of command," and the employee wishes to pursue a grievance, the employee must comply with the 15 calendar day time line to submit a grievance to the Human Resources Director.

The grievance procedure shall be completed as provided herein within 90 calendar days of the initial submission of a grievance for demotion or dismissal and within 120 calendar days of the initial filing of all other grievances, unless the Department and employee mutually agree to additional time. The 90 or 120 day time limit begins on the day the grievance is stamped "Received" in the Human Resources Director's Office.

STEP ONE

- A. The employee must submit his or her grievance in writing to the Human Resources Director. The request must **explicitly** state the grievable issue. Upon request, a representative from the Employee Relations Section shall provide assistance to the employee as needed in preparing his/her written grievance.
- B. Upon receipt of a written grievance, the Human Resources Director or appropriate designee shall acknowledge receipt of the grievance within 5 calendar days from the day the letter is stamped "Received" in the Director's Office. The Human Resources Director or appropriate designee shall have an Employee Relations Representative conduct an investigation within 10 calendar days after acknowledgement of receipt of grievance.

STEP TWO

- A. The Human Resources Director has 5 calendar days from the date the Employee Relations Representative completes his/her investigation to mail a decision to the grievant. As set out in writing in the decision, the grievant then has 10 calendar days from the date of notice from the Human Resources Director to submit a response to the Human Resources Director requesting a hearing before an Employee Relations Committee.

Otherwise, the decision made by the Human Resources Director shall be binding upon the employee with no further appeal rights. If a timely appeal is filed, the Human Resources Director shall instruct the Hearings Officer to select an Employee Relations Committee to review the appeal.

- B. From the date of the request for a hearing, "Step Two (A.)" above, the Department has 40 calendar days to hold a hearing on dismissals and demotions and 70 calendar days for all other hearings. The Hearings Officer shall inform all concerned parties of the date, place and time. By written request, from either the grievant or management, the Human Resources Director may grant an extension to the 40 or 70 calendar day time line when necessary. The Human Resources Director or appropriate designee shall also have the authority to require any Department of Transportation employee to appear or submit any information relevant to the appeal.
- C. The Hearings Officer will coordinate the hearing and answer any questions regarding procedures to be followed.
- D. The written recommendation of the Employee Relations Committee, together with all exhibits, must be received by the Secretary of the Department of Transportation within 10 calendar days after the date of hearing. The Secretary's final decision must be sent to the grievant by certified mail within 10 calendar days after receipt of the Employee Relations Committee's recommendation. The Secretary's decision is final and binding. However, if the Secretary does not render a decision within 10 calendar days, the recommendation of the Employee Relations Committee becomes the final agency decision. Employees may or may not appeal the final agency decision to the State Personnel Commission through the Office of Administrative Hearings.

STEP THREE

As set out in writing in the decision, the appeal to the State Personnel Commission must be made by **filing** a petition for a contested case hearing and certificate of service with the Office of Administrative Hearings within 30 calendar days after receipt of the decision by the Secretary of Transportation. The employee may contact the Office of Administrative Hearings for a form to file a petition for a contested case. Otherwise, the employee forfeits his/her right to appeal. The address is:

Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, North Carolina 27609-6285

A copy of the petition for a contested case hearing must also be **served** on the North Carolina Department of Transportation by personal delivery, or by certified or registered mail, return receipt requested, to:

Tammy Denning
Process Agent
N.C. Department of Transportation
1 South Wilmington Street
1501 Mail Service Center
Raleigh, North Carolina 27699-1501

V. EVALUATION:

This policy will be reviewed annually for compliance and implementation.

SECTION THREE

RIGHTS, DUTIES, AND PRIVILEGES OF AGGRIEVED EMPLOYEES

I. NO THREAT OF REPRISAL:

All eligible employees have the right to pursue a complaint or grievance without threats of reprisal and/or intimidation. Any supervisor or staff member issuing threats of reprisal or intimidation shall be subject to disciplinary action for unacceptable personal conduct.

II. ADMINISTRATIVE LEAVE AND EXPENSE REIMBURSEMENT:

All employees except grievants who are required to attend a hearing, shall be granted administrative leave and per diem costs for lodging, meals, and transportation expenses in accordance with Departmental procedures set forth in the Field Fiscal Procedures Manual. Grievants who prevail in hearings shall be reimbursed for all expenses including per diem costs for lodging, meals, and transportation in accordance with Departmental procedures as set forth in the Field Fiscal Procedure Manual. Grievants and employees representing grievants will be allowed up to a total of 8 hours of administrative leave to prepare for an Employee Relations Committee hearing. Grievants and employees representing grievants will be allowed administrative leave for the time spent in the hearing.

III. WITNESS LIST:

Management and the grievant shall each submit to the Hearings Officer, for approval, a list of no more than 5 witnesses that they desire to attend the hearing. Upon request, the Hearings Officer will provide a complete list of names of the witnesses for the opposing party. If the grievant or person representing management testifies, (he/she must offer his/her testimony first) and he/she is considered one of the 5 witnesses allowed for each party. If either party feels additional witnesses are needed, a written justification must be submitted to the Human Resources Director. The Human Resources Director will either approve or disapprove the request. The Hearings Officer must receive requests for witnesses at least 15 calendar days prior to the date of the hearing. It is mandatory that all witnesses, who are employed by the Department, attend the hearing.

IV. POSTPONEMENT:

Requests for postponement of a scheduled hearing must be submitted in writing to the Hearings Officer. Such requests may be granted only upon a showing of good cause.

V. ACCESS TO INFORMATION:

Management shall cooperate with the grievant's request for access to information in his/her personnel file as provided by N.C.G.S. §126-24 and to other relevant public records and shall respond to **reasonable** requests for copies of such documents. The Human Resources Director or appropriate designee shall rule upon the reasonableness of all such requests. The Personnel Technician of each division, branch, section or unit is the custodian of the personnel files. Employees shall be entitled to view and copy their own personnel files during normal hours upon reasonable advance written notice to the custodian.

VI. CHALLENGING REVIEWER'S IMPARTIALITY:

The Hearings Officer has the responsibility to appoint a diverse Employee Relations Committee. The names of four proposed committee members and two alternates will be submitted to the grievant within 15 calendar days prior to the date of the hearing. To challenge the ability of a committee member to render an impartial recommendation, a written request must be submitted to the Hearings Officer in the Employee Relations Office at least 7 calendar days prior to the scheduled date of the hearing. The grievant has the right to substitute one or two committee members with the alternate(s).

SECTION FOUR

HEARING PROCEDURES

I. CONDUCT OF HEARINGS:

All grievance or appeal hearings shall be conducted as defined in the North Carolina Department of Transportation Employee Grievance Procedures.

II. TIME AND PLACE:

The Hearings Officer shall set the date, time and place of all hearings and shall inform all parties accordingly.

III. POWERS OF HEARING OFFICER:

Prior to opening an Employee Relations Committee hearing, the Hearings Officer shall verify that all mandatory witnesses requested by management and the grievant are present. The Hearings Officer will monitor an Employee Relations Committee hearing in order to ensure that all applicable policies and procedures are followed. The Hearings Officer is available to assist with the interpreting and explaining of policies and procedures as they relate to a case.

IV. EMPLOYEE RELATIONS COMMITTEE:

All hearings shall be held before an Employee Relations Committee. This Committee shall consist of 5 voting members as follows:

- A. Chairperson
- B. Employee from a DOT Administrative Staff Unit (excluding Human Resources)
- C. Employee from the Division of Motor Vehicles
- D. Employee from the Division of Highways
- E. Employee with the same basic occupational classification as the aggrieved employee. For example, if a hearing is being held for a Transportation Engineer II, then either a Transportation Engineer I, II or III could serve on the Committee. This applies to any classification as long as there is not more than a three pay grade difference in the classification of the aggrieved employee and the employee serving on the Committee. Exceptions may be made when necessary, for example, when the occupational classification is a unique one without a comparable position.

NOTE: When alternate Committee members are selected, relevant to departmental representation, the Committee structure may vary from its original composition.

V. POWERS OF COMMITTEE CHAIRPERSON:

The Employee Relations Committee hearing shall be conducted and controlled by the designated chairperson in a structured but informal manner. The chairperson of the Employee Relations Committee shall be empowered to:

- A. Determine the admissibility of all evidence
- B. Rule on all motions
- C. Prescribe the order in which evidence shall be presented
- D. Direct the removal of any persons disrupting the orderly conduct of the hearing
- E. Request the presentation of facts pertinent to the hearing by any employee
- F. Exclude witnesses from the hearing room
- G. Take any other action necessary to ensure a fair and impartial hearing

VI. REPRESENTATION:

Attorneys cannot participate in any capacity at a hearing. Employees may represent themselves or may be represented by another Department of Transportation employee (excluding Employee Relations Representatives).

VII. BURDEN OF PROOF:

- *Adverse personnel action:* Management has the burden of proof in “just cause” cases (dismissal, demotion, and suspension without pay).
- *Discrimination and retaliation:* Where discrimination or retaliation is alleged, the employee has the burden of proof.
- *Other actions:* The applicable statute, regulation or other provision shall determine the burden of proof in law.

VIII. EVIDENCE:

The strict Rules of Evidence shall not apply. Witnesses shall not be sworn. The chairperson shall rule upon any objections to the relevance or admissibility of any documents or testimony. The chairperson may in his/her discretion exclude any evidence if its value to the committee is substantially outweighed by the risk that it will necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

IX. RECORDING OF HEARING:

All Employee Relations Committee Hearings are recorded by a Hearings Officer to enable the Committee to review the testimony before making a recommendation and also to assist the Secretary or his designee in making a final decision. Copies of the recording of the Employee Relations Committee Hearing are also available to the grievant. To obtain copies of an Employee Relations Committee Hearing, the grievant must pay a nominal processing fee and provide the necessary number of cassettes. This payment must be made by certified check or money order and made payable to the N.C. Department of Transportation.

X. CONFIDENTIALITY OF HEARING:

The hearing is confidential and open only to the Committee members, Hearings Officer, management representative and grievant or his/her designated representative and witnesses as they are testifying. It shall not be open to the public.

XI. HEARING FORMAT:

- A.** Prior to the presentation of evidence, the chairperson shall introduce the Committee and parties, explain the purpose of the hearing and the functions of the Committee, and describe the procedures to be followed.
- B.** The parties may make an opening statement summarizing the evidence they intend to present and the conclusions they feel can be drawn from the evidence.
- C.** The party with the burden of proof shall make the first presentation. Each presentation should include the party’s own statement and direct examination, in addition to cross-examination of witnesses by the opposing party. The Committee members may ask questions. Witnesses may not ask questions.
- D.** Each party may make a closing statement. The party with the burden of proof shall make the last statement.
- E.** In all dismissal, demotion and suspension hearings, when the grievant fails to appear for the hearing, the Department must present its case by providing evidence to the Committee that the action taken was justified.

SECTION FIVE

POWERS AND RESPONSIBILITIES OF THE EMPLOYEE RELATIONS COMMITTEE

I. COMMITTEE RESPONSIBILITY:

At the conclusion of the hearing, the Employee Relations Committee shall meet in closed session to review the testimony and the exhibits presented. It is the Committee's responsibility to determine whether management followed applicable policies and procedures. The chairperson shall prepare a written report for the Secretary of the Department of Transportation within 10 calendar days after the date of the hearing. This report shall set forth the Committee's findings, conclusions and recommendations regarding the issue(s) presented.

II. COMMITTEE RECOMMENDATION:

The Committee may recommend appropriate actions for resolving the grievance or appeal. The action must be in compliance with State and Departmental policies.