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I. SCOPE AND APPLICABILITY OF EMPLOYMENT COVERED BY THESE POSITIONS

A. Scope of Category

Employment positions within the North Carolina Community College System Office that are covered by these policies (hereinafter “exempt” positions) are those positions that are not subject to the State Personnel Act (G.S. 126). Exempt positions shall include those deemed desirable by the President and State Board of Community Colleges as referenced in G.S. 115D-3 (~~Attachment A~~).

B. Applicability of Policies

These policies apply to all exempt positions.

II. APPOINTMENT OF EXEMPT POSITIONS

A. Appointment Authority

The State Board shall elect a President of the North Carolina Community College System who shall be the chief administrative officer of the Community College System Office. All other appointments to exempt positions within the Community College System Office shall be nominated by the President and elected by the State Board. Each person thus elected shall receive a letter of appointment that fulfills the requirements of this section (Section II).

B. Requirements for Letter of Appointment

Every letter of appointment to an exempt position shall include the title of the position; the initial salary; ~~provisions for periodic review of compensation¹; the annual leave entitlement of the employee;~~ notice that the employment conferred is for a definite term or is an “employment at will” subject to continuation or discontinuation at the discretion of the President; and notice that the employment is subject to these policies as originally adopted and as they may be revised from time to time. A copy of the policies shall be attached to the letter of appointment.

C. Availability of Funds for Exempt Positions

When an exempt position is funded in whole or in substantial part from sources other than continuing State budget funds, the letter of appointment shall state that continuation of the employee’s service in that position is contingent upon the continuing availability of funds from such other sources to support that position; shall specify the source of such funds; and shall state that the effect of such contingency may apply without the additional notice otherwise required by Section IV.A, IV.B, or IV.C; provided, that the affected employee shall be

¹~~Subject to any compensation policies adopted by the State Board.~~

informed by the earliest practicable date of the occurrence of such a funding contingency.

III. COMPENSATION OF EXEMPT POSITIONS

A. President's Compensation

The President's salary shall be set by the State Board from funds provided by the General Assembly in the Current Operations Appropriations Act. ~~Upon authorization from the State Board, the President's salary may be supplemented with private funds.~~

B. Other Exempt Positions' Compensation

The salaries for all other exempt positions in the System Office shall be set by the State Board upon the recommendation of the President from funds provided in the Current Operations Appropriations Act. ~~Upon authorization from the State Board, exempt positions' salaries may be supplemented with private funds.~~

C. ~~Career Service~~Longevity Pay

~~Effective July 1, 1989, Career service compensation~~Longevity pay shall be provided annually to eligible exempt employees who ~~have or will~~ attain ten (10) years of total State service ~~by July 1, 1989~~. Payment shall be incorporated into monthly pay in the month of eligibility. The provisions of this policy shall be administered in the same manner as the Longevity Pay policy for employees subject to the State Personnel Act. ~~(Attachment H)~~

D. Provisions for Review of Compensation

Recommended salary increases, including performance increases, for exempt positions shall be made to the State Board by the President and based on the following factors:

1. annual performance evaluations
2. scope and complexity of position
3. education and experience
- ~~3.4. availability of funds~~

E. Legislative Increases

Exempt employees shall be awarded the same legislative increase as approved by the General Assembly as SPA employees.

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IV. DISCONTINUATION OF EMPLOYMENT IN EXEMPT POSITIONS

A. Discontinuation of Appointment, with Notice

Employment within an exempt position that is established by the letter of appointment to be an employment at will is subject to discontinuation at any time at the discretion of the President; provided, that such a discontinuation (as distinguished from discharge for cause, Section IV.D.) shall be subject to ~~advance~~ timely written notice of discontinuation ~~, as follows:~~

~~during the first year of service, of~~ not less than ~~30~~ 60 days ~~notice~~ prior to discontinuation of employment.

Employment of the President is subject to discontinuation at any time at the discretion of the State Board; provided that such a discontinuation (as distinguished from discharge for cause, Section IV.D.) shall be subject to written notice of discontinuation of not less than 60 days prior to the discontinuation of employment.

- ~~1. during the second and third years of service, not less than 60 days notice prior to discontinuation of employment; and~~
- ~~2. during the fourth and all subsequent years of continuous service, not less than 90 days notice prior to discontinuation of employment.~~

B. Expiration of -Term-Appointment

Employment within an exempt position that is established by the letter of appointment to be for a definite term expires automatically at the conclusion of the stated term; such an appointment may be renewed or extended at the option of the President upon approval of the State Board, by written notice satisfying the requirement of Section II. If the employer intends not to renew or extend employment,

~~with respect to a term of one year or less, no notice of intent not to renew shall be required;~~

~~with respect to a term of more than one year but less than four years, notice of intent not to renew shall be transmitted in writing at least 60 days prior to the expiration date of the term;~~

~~with respect to a term of four years or more, notice of intent not to renew shall be transmitted in writing at least 90 days prior to the expiration date of the term.~~

Failure to provide written notice ~~as required in subsections 2 and 3 of this section~~ shall result in the automatic extension of employment for a period ~~respectively, of either 60 days or 90 days,~~ beyond the scheduled expiration date of the term.

C. Termination of Employment because of Financial Exigency or Program Curtailment or Elimination

Employment within an exempt position that is established by the letter of appointment to be for a definite term may be terminated prior to expiration of the term because of

1. demonstrable, bona fide System Office financial exigency, subject to the President's sole discretion or
2. major curtailment or elimination of a program.
- ~~2-3.~~ Change in position due to business reorganization

"Financial exigency" is defined to mean a significant decline in financial resources of the System Office that compels a reduction in the System Office budget. The determination of whether a condition of financial exigency exists or whether there shall be a major curtailment or an elimination of a program shall be made by the President, with advance notice to and approval by the State Board. If the financial exigency, ~~or~~ curtailment or elimination of a program, or change in the position due to business reorganization is such that the contractual obligation to an employee within an exempt position cannot be met, the employment of the individual may be terminated, subject to ~~the following notice requirements:~~

~~during the first year of service, written notification of-~~ not less than ~~30-60~~ days notice prior to termination;

~~a. during the second and third years of employment, not less than 60 days notice prior to termination.~~

~~b. during the fourth and all subsequent years of service, not less than 90 days notice prior to termination.~~

D. Reduction in Force

The President has the authority to separate an exempt employee whenever it is necessary due to reduction-in-force. For the purposes of this Policy, "reduction-in-force" is defined as the abolishment of a position. Employees who are separated due to reduction-in-force shall receive a 30 day written notice prior to the effective date of the reduction-in-force.

When the Director of the Budget determines that the closing of a state agency or a reduction-in-force will accomplish economies in the state budget, the agency shall pay severance salary continuation or a discontinued service retirement, provided that reemployment is not available. The provisions of this policy shall be administered in the same manner as the Severance Salary Continuation Policy for employees subject to the State Personnel Act.

Severance shall only be paid when the separation is due to reduction-in-force and shall not be paid when an employee is separated for cause.

~~D.E.~~ Discharge for Cause

Any employee occupying an exempt position may be discharged for stated cause. Discharge for cause is to be distinguished from discontinuation with notice (Section IV. A), automatic expiration of term (Section IV.B) and termination due to financial exigency or program curtailment or elimination (Section IV.C). Stated causes for discharge shall include, but not necessarily be limited to, incompetence, unsatisfactory performance, neglect of duty, insubordination, or personal misconduct that interferes with the capacity of the employee to perform effectively the requirements of his/her job.

V. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy and intention of the North Carolina Community College System Office that there be equal employment opportunity and freedom from unlawful discrimination in all employment within the System Office. There shall be no discrimination in exempt positions on the basis of race, color, national origin, creed, sex, religion, political affiliation, disability, or age². Employment in exempt positions shall be conducted in accordance with all provisions of state or federal laws or regulations prohibiting any such discrimination, and in accordance with applicable affirmative action plans.

VI. HOLIDAYS AND LEAVE

A. Employees in exempt positions shall be subject to the same State prescribed holidays given employees subject to the State Personnel Act. (~~Attachment B~~)

B. Vacation Leave

1. The primary purpose of vacation is to allow every employee to renew their physical and mental capabilities and to remain a fully productive employee. Employees are encouraged to request leave each year in order to achieve this purpose. However, the scheduling of vacation leave shall be subject to the approval of the supervisor.
2. Vacation leave for the President and other exempt personnel is earned at 25 3/4 days each year (17 hours 10 minutes each month; 206 hours each year). Earnings are prorated for part time employees based on percentage of time employed.

² Bona fide occupational qualifications or other exceptions to those general prohibitions, specifically provided for by State or Federal law, may be applied to exempt positions.

3. Vacation leave may accumulate without any applicable maximum until December 31 of each year. However, payment for accumulated vacation leave shall not exceed 240 hours (30 days) at the time of separation from service. Also, on December 31 of each year, accumulated vacation leave in excess of 240 hours automatically converts to sick leave. Two hundred forty hours (240) is the maximum accumulation of vacation leave that can be carried forward to January 1 of the next calendar year. Accumulation for part time employees shall be prorated. ~~(Attachment C)~~

4. ~~An~~ newly hired exempt employee may be advanced vacation leave equal to the amount that can be earned by December 31 of the first year of employment, current calendar
~~year.~~

5. Unused vacation leave may transfer if the employing agency or school administrative unit is willing to accept.

6. Exempt employees shall be awarded bonus leave when awarded by the General Assembly and shall be subject to the same policies regarding the use of this leave as SPA employees.

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C. Sick Leave

1. Sick leave may be used for illness or injury, medical appointments, temporary disability, to care for a member of the immediate family, death in immediate family, donations to a member of the immediate family who is an approved voluntary shared leave recipient, and adoption of a child.

2. Sick leave for the President and other exempt personnel is earned at 12 days each year (8 hours each month; 96 hours each year). Earnings are prorated for part time employees based on percentage of time employed.

~~3. Sick leave may be advanced equal to the amount that can be earned by December 31 of the current calendar year.~~

~~4.3.~~ Vacation leave in excess of 240 hours on December 31 of each year automatically converts to sick leave. Sick leave earnings convert to retirement credits upon retirement.

~~5.4.~~ Unused sick leave may transfer if the employing agency or school administrative unit is willing to accept.

~~6.5.~~ Unused sick leave at the time of separation shall not be paid as terminal leave. However, unused sick leave may be reinstated if an employee returns to State employment within five years from any type of separation.

- D. Voluntary Shared Leave, Community Service Leave, Leave Without Pay, ~~Parental Leave~~, Civil Leave, Military Leave, and Family and Medical Leave

Employees in exempt positions shall be subject to the same provisions as are applicable to employees subject to the State Personnel Act. (~~Attachment D~~)

~~E. Extended Educational Leave~~

~~An EPA employee may submit a written request to the President for extended educational leave (i.e., to participate in job or career related work study, scholarship or fellowship programs). If the President deems that the value added by granting the extended educational leave will be significant to both the employee and the system, the President may recommend that the State Board of Community Colleges:~~

~~Grant the extended educational leave for a term up to six (6) months without pay. Where allowable under law, regulations, and policy, the employee may retain benefits at their personal expense.~~

~~Grant the extended educational leave for a term up to six (6) months and that the employee receive 50% of their regular salary and the maximum allowable benefits during the term of the extended educational leave. Where allowable under law, regulations, and policy, the employee may increase said benefits at their personal expense.~~

~~Grant the extended educational leave for a term up to six (6) months and that the employee receive 75% of their regular salary and the maximum allowable benefits during the term of the extended educational leave. Where allowable under law, regulations, and policy, the employee may increase said benefits at their personal expense.~~

VII. PROTECTED ACTIVITY

Employment in exempt positions shall not be adversely affected by the exercise of rights guaranteed by the First Amendment to the United States Constitution or by Article I of the North Carolina Constitution; provided, that employees in exempt positions shall be subject to any limitations on political activity established by Article 5 of N.C.G.S. Chapter 126. (~~Attachment E~~)A

VIII. STATUTORY AND OTHER RULES OF EMPLOYMENT

- A. Privacy of Personnel Records

Employees in exempt positions enjoy the protection of and are subject to the provisions of Article 7 of G.S. 126, entitled "The Privacy of State Employee Personnel Records." (~~Attachment F~~)B

- B. Employment of Related Persons

Employees in exempt positions are subject to the policy concerning employment of related persons as adopted by the State Personnel Commission and as it may be revised from time to time. ~~(Attachment G)~~ This policy states that members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Paragraph. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations.

C. Retirement

Employees in exempt positions are subject to the provisions of Chapter 135 of the North Carolina General Statutes, entitled "Retirement System of Teachers and State Employees."

D. Employment Preference for Veterans

Exempt personnel enjoy the protection of and are subject to the provisions of North Carolina General Statute 128-15 which provides for reference in employment for veterans of United States military service and their spouses and widows or widowers.

IX. EFFECTIVE DATE

The effective date of these policies shall be July 1, 1987; amended 1989; amended May 1, 2002. Amended July 17, 2009.

ATTACHMENT A

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/she is expected to perform services for which he/she receives compensation from the State;
- (2) Otherwise use the authority of his/her 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/she is not performing services for which he/she receives compensation from the State. A State employee who is or may be expected to perform his/her 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/she is actually performing the duties of his/her office. The willful violation of this subdivision shall be a 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 a State employee subject to the Personnel Act, probationary State employee, or temporary State employee to support or contribute to a political candidate or party by threatening him/her with employment termination or discipline or by promising preferential personnel treatment.

- (b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment for not more than six months, or both.
- (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 termination 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. Threat to obtain political contribution or support.

- (a) It is unlawful for any person to coerce a State employee subject to the Personnel Act, probationary State employee, or temporary State employee to support or contribute to a political candidate or party by explicitly threatening him with employment termination or discipline.
- (b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment for not more than six months, or both.
- (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 termination 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.

“126-15. 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. 126-5(d).”

ATTACHMENT B

ARTICLE 7

The Privacy of State Employee Personnel Records

“126-22. Personnel files not subject to inspection under G.S. 132-6.

Personnel files of State employees, former State employees, or applicants for State employment shall not be subject to inspection and examination authorized by G.S. 132-6. For purposes of this Article, a personnel file consists on any information gathered by the department, division, bureau, commission, council, or other agency subject to Article 7 of this Chapter which employs an individual, previously employed an individual, or considered an individual’s application for employment, or by the office of State Personnel, and which information relates to the individual’s application, selection or non-selection, promotions, demotions, transfers, leave, salary, suspension, performance evaluation forms, disciplinary actions, and termination of employment wherever located and in whatever form. 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.

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

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: name, age, date of original employment or appointment to the State service, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. 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. 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.

“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 (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 non-employment of any applicant, employee or former employee employed by or assigned to 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 of 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/her file a statement relating to the material he/she considers to be inaccurate or misleading. An employee,

former employee or applicant for employment who objects to material in his/her file because he/she considers it inaccurate or misleading may seek the removal of such material from his/her 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 the 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 misdemeanor and upon conviction shall 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 misdemeanor and upon conviction shall 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.

