

**SEPARATION POLICY****Contents:**

§ 1.	Policy .....	1
§ 2.	Resignation .....	1
§ 3.	Voluntary Resignation without Notice .....	2
§ 4.	Separation due to Unavailability .....	2
§ 5.	Procedure for Separation due to Unavailability .....	3
§ 6.	Leave Payout Upon Separation due to Unavailability .....	4
§ 7.	Grievance or Appeal of Separation .....	5
§ 8.	Retirement.....	5
§ 9.	Reduction in Force .....	5
§ 10.	Dismissal.....	6
§ 11.	Appointment Ended .....	6
§ 12.	Death .....	7
§ 13.	Separation Procedures.....	7
§ 14.	Sources of Authority .....	7
§ 15.	History of This Policy .....	8

**§ 1. Policy**

Separation from State service occurs when an employee leaves payroll for a reason listed below. (Policies stated below, except for leave policies, do not apply to employees described in “Appointment Ended.”)

**§ 2. Resignation**

An employee may voluntarily terminate services with the State by submitting a resignation to the appointing authority. Normally, it is expected that an employee will give written notification at least two weeks’ prior to the last day of work. When the employee resigns verbally, the agency shall request written confirmation. If the agency does not receive written confirmation of the verbal resignation from the separating employee, the appointing authority who received the verbal resignation shall document it in writing, including the date the employee’s resignation is to be effective and retain the document the separating employee’s personnel file. The appointing authority, or their designee, should provide written confirmation of receipt and acceptance of the employee’s verbal or written resignation to the separating employee.

Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave; it shall be reinstated if the employee returns to State service within five years or it may be applied toward

## Separation Policy (cont.)

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retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

Such separation is voluntary and creates no right of grievance or appeal.

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### § 3. **Voluntary Resignation without Notice**

An employee who is absent from work and does not contact the employer for three consecutive scheduled workdays may be separated from employment as a voluntary resignation. A factor to consider when determining if the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact the employer.

Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave; rather, it shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

Such separation is voluntary and creates no right of grievance or appeal.

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### § 4. **Separation due to Unavailability**

An employee may be separated when the employee and agency are unable to reach a return-to-work arrangement that meets both the needs of the agency and the employee's condition when:

- (1) the employee remains unavailable for work after all applicable leave credits and leave benefits have been exhausted, and agency management does not grant leave without pay, as defined in 25 NCAC 01E .1101, if the employee is unable to return to all the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis; or
- (2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable to return to all the position's essential duties as set forth in the employee's job description or designated work schedule due to a court order, due to a loss of required credentials, due to a loss of other required certification, or due to other extenuating circumstances that renders the employee unable to perform the position's essential duties as set forth in the employee's job description or designated work schedule; or

## Separation Policy (cont.)

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(3) notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is on workers' compensation leave of absence, and the employee is unable to return to all the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, a separation may occur on the earliest of the following dates:

- (i) after the employee has reached maximum medical improvement for the work related injury for which the employee is on workers' compensation leave of absence and the agency is unable to accommodate the employee's permanent work restrictions related to such injury; or
- (ii) 12 months after the date of the employee's work related injury.

"Applicable leave credits and benefits" is defined as the sick, vacation, bonus, incentive, and compensatory leave that the employee may earn, but does not include short-term or long-term disability.

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### § 5. Procedure for Separation due to Unavailability

#### 1. "Pre Separation Letter"

An agency must send the employee written notice of proposed separation in a Pre Separation Letter at least 15 calendar days prior to the agency's planned date of separation.

The letter must include:

- a. Planned date of separation; and
- b. Efforts undertaken to avoid separation; and
- c. Why efforts were unsuccessful; and
- d. Deadline for employee to respond in writing no less than 5 calendar days prior to agency's planned date of separation.

#### 2. "Letter of Separation"

If the agency and employee are unable to agree on terms of continued employment or if the employee does not respond to the Pre Separation letter, an agency must then send the employee written notice of separation in a Letter of Separation no earlier than 20 calendar days after the Pre Separation letter was sent to the employee. The letter must include:

- a. Actual date of separation; and
- b. Specific reasons for separation; and
- c. Employee's right of appeal.

## Separation Policy (cont.)

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It is advisable for agency human resources staff to confer with agency legal counsel regarding customized, appropriate content of the Pre Separation Letter and Letter of Separation.

It is recommended, but not required, for the agency to send the "Pre Separation Letter" and "Letter of Separation" via certified mail. An agency may also wish to send such letters via other means, such as e-mail, first class U.S. mail, or Federal Express, in addition to certified mail. Agencies should confer with their legal counsel on when a letter sent by multiple modes of transmission would be considered received by the employee.

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### § 6. **Leave Payout Upon Separation due to Unavailability**

When an employee is separated for reasons other than a work-related injury, unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave; rather, it shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

When an employee is separated due to a work-related injury, leave shall be paid in a lump sum as follows:

- (1) Payment of unused vacation and eligible unused bonus leave already earned as of the date of injury;
- (2) Payment of unused vacation and sick leave accumulated only during the first 12 months of workers' compensation leave; and
- (3) Payment of any eligible unused bonus leave granted on or after the date of injury.

If the employee returns to permanent duty after workers' compensation leave, vacation leave remains available for use after returning to work until the end of the calendar year, at which time any excess vacation leave over 240 hours shall be converted to sick leave. If the employee separates for any reason during the calendar year in which they returned to work after workers' compensation leave, the employee shall be paid a lump sum for unused leave as follows:

- (1) Payment of unused vacation and eligible unused bonus leave already earned as of the date of injury;

## Separation Policy (cont.)

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(2) Payment for unused vacation leave accumulated during the first 12 months of workers' compensation leave; and

(3) Payment of any eligible unused bonus leave granted on or after the date of injury.

Payment shall not be made for unused sick leave; rather, it shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

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### § 7. **Grievance or Appeal of Separation**

An employee may grieve or appeal a separation due to unavailability. Such a separation shall not be considered a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden shall be to prove that the employee was unavailable<sup>1</sup>.

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### § 8. **Retirement**

An employee may retire when the employee is eligible and applies for retirement benefits from the Teachers' and State Employees' Retirement System (TSERS), from the Law Enforcement Officers' Benefit and Retirement Fund, or the University Optional Retirement Program.

Unused vacation, or any portion, may be exhausted prior to the date of separation, and the remainder (not to exceed 240 hours) along with eligible unused bonus leave will be paid in a lump sum. Unused sick leave may be applied toward retirement, if applicable under the employee's retirement plan.

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### § 9. **Reduction in Force**

An employee may be reduced in force for reasons of shortage of funds or work, abolishment of a position, or other material changes in duties or organization. Employees may elect, subject to approval by management, to exhaust vacation leave after their last day of

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<sup>1</sup> This is the burden of proof for the agency stated in G.S. 126-34.02(b)(3). The rule currently states "Rather, the agency's burden shall be to prove that the employee was unavailable, that efforts were undertaken to avoid separation, and why the efforts were unsuccessful. This rule is in the notice-and-comment process. This footnote will be removed when the rule is changed.

## Separation Policy (cont.)

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work and be paid in a lump sum for the balance not to exceed 240 hours (plus eligible unused bonus leave). If an employee had over 240 hours of vacation leave at the time of reduction in force, the excess leave shall be reinstated if reemployed within one year.

Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

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### § 10. **Dismissal**

Dismissal is involuntary separation for just cause in accordance with the provisions of the Disciplinary Action policy.

Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum.

Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

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### § 11. **Appointment Ended**

An "Appointment Ended" separation occurs when an employee is terminated for reasons other than just cause from one of the following positions:

- exempt policymaking or exempt managerial positions designated pursuant to N.C. Gen. Stat. 126-5(d),
- confidential assistants and secretaries,
- chief deputy or chief administrative assistant, or
- other positions designated as exempt from the just cause provisions of the State Human Resources Act.

These separations may occur whenever the Agency Head or the Governor determines that the services of the employee are no longer needed. Unused vacation leave not to exceed 240 hours plus eligible unused bonus leave is paid in a lump sum. Payment shall not be made for unused sick leave. It shall be reinstated if the employee returns to State service within five years or it may be applied toward retirement if eligible to retire within five years, if applicable under the employee's retirement plan.

**Advisory Note:** The Division of Employment Security (DES) has ruled that these employees are eligible for unemployment benefits. If the employee voluntarily resigns before the date the

## Separation Policy (cont.)

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appointment ends, it will be called a “Resignation” and will be subject to DES regulations dealing with voluntary separations.

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### § 12. **Death**

Payment for unpaid salary, unused vacation leave (not to exceed 240 hours plus eligible unused bonus leave), and reimbursable travel must be made, upon establishment of a valid claim, to the deceased employee’s administrator or executor. In the absence of an administrator or executor, payment must be made to the Clerk of Superior Court of the county of the deceased employee’s residence. Payment shall not be made for unused sick leave.

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### § 13. **Separation Procedures**

The last day of work or the day of death shall be the date separated, except in the following cases:

- (1) If an employee is exhausting vacation leave prior to retirement or reduction in force, the date separated shall be the ending date of leave.
- (2) If an employee is exhausting approved sick/vacation leave for medical reasons and resigns or dies before returning to work, the date separated shall be the date the employee resigns or dies. This is subject to the approval of the Agency HR office.
- (3) If an employee gives notice of a resignation and becomes ill, the employee may exhaust sick/vacation leave up until the date of the resignation. The date separated will be the date of resignation. This is subject to the approval of the Agency HR office.

It is important to know the correct reason for resignation or dismissal. For example, if an employee resigns for other employment, the reason should include (if known) whether the employee left for a higher salary, or other pertinent facts that led to the employee’s decision to leave.

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### § 14. **Sources of Authority**

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(7a) authorizes the State Human Resources Commission to create policies governing the separation of employees.

**Separation Policy (cont.)**

This policy is consistent with N.C.G.S. § 126-34.02, which states the burden of proof for separation grievances, and the Administrative Code rules on separation of employees, at 25 NCAC 01C .1001 *et seq.*

§ 15. **History of This Policy**

Date	Version
October 1, 1953	First version. Adoption of policy for terminal leave which states that employees cease to earn leave, be entitled to holidays and cease to be eligible for salary increments or promotions.
July 1, 1977	Provides that separation policies, except for leave provisions, do not apply to employees in positions designated exempt.
November 1, 1989	Policy on Involuntary Resignation Without Notice added. Policy on Separation Due to Unavailability When Leave is Exhausted added.
September 1, 1991	Dismissal policy revised.
March 1, 1996	Definition of "Appointment Ended" added.
March 1, 2003	Advisory Note added: "Applicable leave credits" means leave requested by the employee and approved by the supervisor. In cases of illness, it means sick and/or vacation leave (or any portion) which the employee chose to exhaust prior to going on leave without pay. If there is a vacation leave balance at the time of separation, it shall be paid in a lump sum.
June 1, 2003	Clarified Separation Due to Unavailability by defining applicable leave credits and by explaining how to pay out leave balances.
September 1, 2004	Voluntary Resignation Without Notice changed to incorporate rule change.
January 1, 2007	Changed wording of "Unavailability When Leave is Exhausted" to eliminate confusion with the ADA.
October 1, 2008	Revised to allow a RIF employee to exhaust excess vacation leave. Clarified Separation Procedures.
November 1, 2013	Change definition of "Separation Due to Unavailability" to include non- medical reasons.



**Separation Policy (cont.)**

August 4, 2016	Separation Policy changed to incorporate rule change and for clarification. Removed "Unavailability" to prevent an employer from having to retain an employee that has lost their credentials, certification due to a court order or other extenuating circumstances that renders the employee unable to perform the essential duties of their job, as set forth in the job description. Notification Required changed to incorporate rule change.
October 21, 2019	The Separation Policy was changed to clarify the current practice of leave payout when an employee is separated while on worker's compensation leave, to allow for payout of unused vacation and bonus leave earned as of the date of injury, payment of unused vacation and sick leave accumulated during the first 12 months of worker's compensation leave and payout of any unused bonus leave that is eligible for payout and earned after the date of injury. The Policy also clarifies the procedure that agencies are to follow when separating an employee who is on worker's compensation leave as well as applicable grievance rights.
December 8, 2022	Adding language to clarify what an agency should do if an employee provides a verbal resignation. .Adding language to indicate the appointing authority who receives any verbal or written resignation should acknowledge receipt and accept the resignation in writing. Revises burden related to separation due to unavailability to be consistent with <u>N.C.G.S. § 126-34.02(b)(3)</u> . Other minor changes for consistency. Adding language regarding sending Pre Separation Letters and Letters of Separation via e-mail. Clarified exempt positions.