

25 NCAC 01I .2005 SEPARATION

Separation occurs when an employee leaves the payroll for reasons indicated in this Rule or because of death. Employees who have acquired permanent status are not subject to involuntary separation or suspension except for cause or reduction-in-force. The following are types of separation:

- (1) Resignation or Retirement. An employee may terminate his services with the agency by submitting a resignation or request for retirement to the appointing authority at least two weeks prior to his last day of work;
- (2) Dismissal. Dismissal is involuntary separation for cause, and shall be made in accordance with the provisions of 25 NCAC 01I.2300 Disciplinary Action: Suspension, Dismissal and Appeals;
- (3) Reduction-in-Force. For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No permanent employee shall be separated while there are emergency, intermittent, temporary, probationary, or trainee employees in their first six months of the trainee progression serving in the same or related class, unless the permanent employee is not willing to transfer to the position held by the non-permanent employee, or the permanent employee does not have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee. A permanent employee who was separated by reduction-in-force may be reinstated at any time in the future that suitable employment becomes available. The employer may choose to offer employment with a probationary appointment. The employee must meet the current minimum education and experience standard for the class to which he is being appointed;
- (4) Voluntary Resignation Without Notice. An employee who is absent from work and does not contact the employer for three consecutive workdays may be separated from employment as a voluntary resignation. Such separations create no right of grievance or appeal pursuant to the State Human Resources Act (G.S. Chapter 126). A factor to be considered when determining whether the employee should be deemed to have voluntarily resigned is the employee's culpability in failing to contact his or her employer; and
- (5) Separation Due to Unavailability When Leave is Exhausted. An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay. Prior to separation the employing agency shall notify the employee in writing of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful.
- (6) Definitions:
 - (a) Unavailability is defined as the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; and
 - (b) Applicable leave credits is defined as the sick, vacation and bonus leave the employee chose to exhaust prior to going on leave without pay.

*History Note: Authority G.S. 126-4;
Eff. August 3, 1992;
Amended Eff. January 1, 2007; September 1, 2004; December 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016.*