

SUBCHAPTER 01L - EQUAL OPPORTUNITY

SECTION .0100 - EQUAL EMPLOYMENT OPPORTUNITY PLANS AND PROGRAMS

25 NCAC 01L .0101 DUTIES OF SECTION

The Office of State Human Resources shall develop and administer a program to ensure that employees are provided with equal employment opportunities at all occupational levels.

History Note: Authority G.S. 126-4; 126-16; 126-19;
Eff. October 1, 1977;
Amended Eff. December 2, 1995; November 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0102 PURPOSE

(a) Agencies and universities of the State of North Carolina shall provide all current employees and applicants for state employment with equal employment opportunities, without discrimination on the basis of race, color, religion, national origin, sex, age, genetic information, or disabling condition as defined by G.S. 168A or disability as defined by the Americans With Disabilities Act, as amended. All personnel policies, practices and programs shall be administered and implemented in a non-discriminatory manner by all state agencies and universities.

(b) Each agency and university shall adopt and implement an equal employment opportunity plan in order to:

- (1) assure that all personnel policies and practices relevant to total employment in state government will guarantee and preserve equal employment opportunities for all applicants and employees; and
- (2) assure diversity of the state's workforce at all occupational levels.

History Note: Authority G.S. 95-28.1A; 126-4(10); 126-16; 126-19; P.L. 110-233; 122 Stat. 881;
Eff. October 1, 1977;
Amended Eff. May 1, 2012; December 2, 1995; November 1, 1987; October 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0103 PROGRAM IMPLEMENTATION: STATE LEVEL

(a) The Office of State Human Resources shall develop and implement a State Equal Employment Opportunity Plan to promote equal employment opportunity to include, but not be limited to, a policy statement and the following elements:

- (1) recruitment,
- (2) disciplinary processes,
- (3) selection processes,
- (4) hiring,
- (5) promotion,
- (6) training,
- (7) compensation and benefits,
- (8) performance appraisal,
- (9) reduction-in-force,
- (10) harassment prevention,
- (11) evaluation mechanism,
- (12) reporting mechanism,
- (13) transfer or separation, and
- (14) grievance procedures.

(b) The Office of State Human Resources shall provide:

- (1) technical assistance, training, oversight, monitoring, evaluation, and support programs to each state agency and university.
- (2) develop systems to review, analyze and evaluate trends regarding all personnel policies affecting the elements in the State EEO Plan.

History Note: Authority G.S. 126-4(10); 126-16; 126-19;

Eff. October 1, 1977;

Amended Eff. December 2, 1995; October 1, 1984;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0104 PROGRAM IMPLEMENTATION: AGENCY AND UNIVERSITY LEVEL

(a) Each state agency head and University Chancellor shall develop and implement an agency or university equal employment opportunity program and plan.

(b) Each state agency and university shall submit a plan by March 1 of each year to the Office of State Human Resources for review, technical assistance and approval by the Director of State Human Resources. The Plan and program shall be approved if they comply with the requirements in this Rule.

(c) Each state agency's and university's equal employment opportunity plan and program shall include the following elements:

- (1) The State EEO policy and an EEO policy statement applicable to the agency or university. The policy shall:
 - (A) commit the agency or university to equal employment opportunity;
 - (B) prohibit discrimination and provide equal employment opportunity to applicants and employees without regard to race, color, national origin, religion, creed, sex, age, the genetic information, or disability;
 - (C) list applicable laws, regulations and guidelines pertaining to EEO compliance including Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1968, as amended; Executive Order 11246, as amended; the Rehabilitation Act of 1973; the Civil Rights Restoration Act of 1988; the Americans with Disabilities Act of 1990, as amended; the Civil Rights Act of 1991; Genetic Information Nondiscrimination Act of 2008; G.S. 126-16; as amended; and other state EEO and anti-discrimination laws or statutes;
 - (D) prohibit retaliatory actions against employees who file a complaint or charge of employment discrimination, testify, assist or participate in any manner in a hearing, proceeding or investigation of employment discrimination;
 - (E) commit the agency or university to non-discriminatory practices in recruitment, selection, hiring, promotion, compensation, performance appraisal, disciplinary and grievance procedures, separations, and reduction in force;
 - (F) describe provisions for providing reasonable accommodation for persons with disabilities;
 - (G) prevent harassment, including sexual harassment;
 - (H) describe the accountability of agency head or chancellor, managers, supervisors and others for EEO compliance;
 - (I) provide for monitoring and evaluating the plan and program effectiveness; and
 - (J) include the signature of the agency head or the chancellor and date;
- (2) The assignment of responsibility and accountability. The assignment of responsibility and accountability shall describe the responsibilities of the following:
 - (A) The agency head's or the university chancellor's responsibilities shall include:
 - (i) the appointing or designating of a management-level official responsible to oversee the EEO program;
 - (ii) communication of agency or university commitment to EEO policies, plans, and procedures to all employees, applicants and the general public;
 - (iii) providing necessary resources to ensure the successful implementation of the EEO program; and
 - (iv) ensuring the development and implementation of policies, procedures, and programs necessary to achieve a workforce in each occupational category that reflects the N.C. State working population as defined by U.S. Census data.
 - (B) The managers' and supervisors' responsibilities shall include:
 - (i) assisting in the development and implementation of the EEO plan and program and establishing program objectives;
 - (ii) maintaining a diverse workforce for the department, division, work unit, or section;

- (iii) assisting the EEO officer in periodic evaluations to determine the effectiveness of the EEO program; and
 - (iv) providing a work environment and management practices which support equal opportunity in all terms and conditions of employment.
- (C) The EEO Officer(s) responsibilities shall include:
- (i) the interpreting and applying of Federal laws, state statutes, policy regulations and guidelines related to discrimination in employment and equal opportunity;
 - (ii) reviewing hiring recommendations for compliance with EEO program objectives prior to the final agency or university hiring decision;
 - (iii) maintaining and analyzing workforce utilization data for development of the equal employment plan and program in conjunction with management;
 - (iv) maintaining and analyzing data on employment practices to monitor and evaluate the effectiveness of the EEO program and to make recommendations on improvements;
 - (v) advising management of the program's impact and effectiveness on workforce demographics at all occupational levels;
 - (vi) providing or coordinating EEO training for management and employees;
 - (vii) providing confidential counseling or consultation for management and employees in matters involving EEO concerns or complaints alleging discrimination (formally, informally and within agency or university guidelines);
 - (viii) establishing and maintaining effective working relations with groups concerned with equal employment opportunity;
 - (ix) coordinating programs (internally or in cooperation with State Human Resources) to achieve program objectives and to provide for management and employee input and assistance in program development and implementation; and
 - (x) presenting information on the EEO plan and program to management and employees on a regular basis.
- (D) The EEO Committee responsibilities shall include:
- (i) serving as a communication link between managers and employees and the EEO staff on aspects of the EEO plan and program;
 - (ii) reviewing and evaluating the equal employment opportunity plan and program;
 - (iii) reviewing workforce representation data in each occupational category;
 - (iv) surveying the organizational climate and employee attitudes and evaluating the resultant data;
 - (v) meeting with the agency head or university chancellor in conjunction with the EEO Officer to discuss EEO programs, report on the employees' concerns, and recommend changes or additions to the EEO policy, plan, or program; and
 - (vi) identifying recruitment resources and other activities designed to strengthen the EEO program; meeting as a committee at least quarterly.
- (3) The dissemination procedures. These procedures shall include methods for communicating the commitment, intent, and provisions of the EEO plan and program to employees and the general public.
- (4) The workforce analysis. This analysis shall be used to examine the representation of each demographic group within each occupational category using one of the following three bases for comparison:
- (A) the N.C. working populations (ages 18-64) as established by the U.S. Census. The statewide N.C. working population shall be used for the officials and administrators, management related and professional occupational categories; and the geographical recruiting area working population shall be used for the other occupational categories;
 - (B) the two factor analysis as defined by the Office of Federal Contract Compliance Programs (OFCCP) regulations; or
 - (C) the N.C. Occupational specific civilian labor force and N.C. working population (18-64) compromise standard, as established by the State Human Resources Commission. The occupation specific labor force of each demographic group and the working population by each demographic group shall be compared to the agency or university workforce. An average of the underutilization resulting from the comparisons of the two criteria shall be

used to determine the workforce underutilization by occupational category for each demographic group. When calculating the underutilization resulting from the occupation specific/working population comparison, the statewide working population and the statewide occupational specific category compromise numbers shall be used for analyzing the officials and administrators, management related and the professional occupational categories. When calculating the underutilization resulting from the occupation specific/working population comparison, the working population in the local geographical recruiting area and the occupation specific category compromise numbers in the local geographical recruiting area may be used for analyzing the other occupational categories. Only one basis or criteria for comparison shall be selected for use by an agency head or university chancellor. The analysis shall identify each occupational category in which groups are underutilized, (defined as having fewer employees in a demographic group in a particular occupational category than would be expected based on the selected basis or criteria for comparison). The analysis shall also assess the agency's or university's workforce needs and capability for addressing the identified underutilization;

- (5) The program objectives. These objectives shall establish strategies targeted at eliminating or reducing any underutilization identified in each occupational category;
- (6) The program activities and strategies. These activities and strategies shall be implemented to accomplish program objectives. These strategies shall include the following:
 - (A) recruitment procedures to attract a diverse pool of applicants to each occupational category;
 - (B) disciplinary process designed to provide equitable treatment for all employees in accordance with the State's discipline rules;
 - (C) selection procedures designed to ensure that all of the steps in the process are nondiscriminatory and job related;
 - (D) hiring process designed to include consistent information for new hires regarding employment conditions (e.g., type of appointment or salary);
 - (E) promotion procedures designed to enhance upward mobility and fully utilize the skills of the existing workforce;
 - (F) training procedures designed to enhance employee development and advancement opportunities;
 - (G) compensation and benefits analysis procedures designed to review benefits, monitor salaries, analyze practices in order to determine trends, and ensure that all employees receive compensation and benefits without discrimination;
 - (H) performance appraisal designed to hold managers and supervisors accountable for the progress of the agency's or university's EEO program, and to establish, maintain, and apply employee performance standards that are free from bias;
 - (I) transfer or separation analysis designed to identify trends and to measure impact on underutilized groups;
 - (J) grievance procedures to ensure fair and equitable review of complaints in accordance with agency or university procedures and State rules on grievance; and
 - (K) a process to enroll managers and supervisors in the Equal Employment Opportunity Institute (EEOI), an EEO educational and diversity training program, as defined by G.S. 126-16.1;
- (7) An evaluation mechanism. This evaluation mechanism shall be designed to assess overall effectiveness of the equal employment opportunity program and to determine the achievement of agency or university EEO objectives as identified in the EEO plan and program;
- (8) A reporting mechanism. This reporting mechanism shall be designed to provide agency or university management, on a regular basis throughout the year, with data on the various program activities, workforce trends, and progress towards achievement of program objectives;
- (9) Procedures to prevent and eliminate harassment. These procedures shall be designed to create an environment that is fair to all employees without regard to race, sex, age, national origin, color, creed, religion, genetic information, or disability, as defined by G.S. 168A-3, or the American with Disabilities Act, as amended.
- (10) Reduction-in-force procedures. These procedures shall be designed to analyze layoff decisions and to determine their actual or potential adverse impact on underutilized groups; and

- (11) Procedures for monitoring. These procedures shall establish a data management system for maintaining and analyzing data on transactions regarding agency or university trends in compensation, promotion, selection, recruitment, training, separations, performance appraisals, and all other terms and conditions of employment.
- (d) Each state agency head and university chancellor shall designate an official at the deputy secretary, assistant secretary, vice-chancellor or assistant vice-chancellor level or an official with a direct reporting relationship to the agency head or chancellor, to assume responsibility for the operation and implementation of their equal opportunity plan and program.

History Note: Authority G.S. 95-28.1A; 126-4(10); 126-16; 126-19; P.L. 110-233; 122 Stat. 881;
Eff. October 1, 1977;
Amended Eff. May 1, 2012; August 1, 2002; December 2, 1995; November 1, 1988; November 1, 1987; October 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0105 PROGRAM PLAN REVIEW

History Note: Authority G.S. 126-4(10); 126-16;
Eff. October 1, 1977;
Amended Eff. November 1, 1988; November 1, 1987; October 1, 1984; October 1, 1980;
Repealed Eff. December 2, 1995.

25 NCAC 01L .0106 REPORTS

History Note: Authority G.S. 126-4; 126-16;
Eff. October 1, 1978;
Repealed Eff. December 2, 1995.

SECTION .0200 - ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) IN THE WORKPLACE

25 NCAC 01L .0201 EDUCATION AND TRAINING

History Note: Authority G.S. 126-4;
Eff. November 1, 1990;
Amended Eff. March 1, 1992;
Recodified to 25 NCAC 01N .0301 Eff. December 29, 2003.

25 NCAC 01L .0202 BASIC EDUCATION AND TRAINING COMPONENT

History Note: Authority G.S. 126-4;
Eff. November 1, 1990;
Amended Eff. March 1, 1992; May 1, 1991;
Recodified to 25 NCAC 01N .0302 Eff. December 29, 2003.

25 NCAC 01L .0203 ADVANCED EDUCATION AND TRAINING COMPONENT

History Note: Authority G.S. 126-4;
Eff. November 1, 1990;
Amended Eff. June 1, 1992; March 1, 1992; May 1, 1991;
Recodified to 25 NCAC 01N .0303 Eff. December 29, 2003.

25 NCAC 01L .0204 ANTI-DISCRIMINATION

History Note: Authority G.S. 126-4; 130A-148C(i); 168A-3(9);

Eff. November 1, 1990;
Recodified to 25 NCAC 01N .0304 Eff. December 29, 2003.

25 NCAC 01L .0205 TESTING AND EXAMINATION

History Note: Authority G.S. 126-4;
Eff. November 1, 1990;
Recodified to 25 NCAC 01N .0305 Eff. December 29, 2003.

25 NCAC 01L .0206 CONFIDENTIALITY

History Note: Authority G.S. 126-4;
Eff. November 1, 1990;
Recodified to 25 NCAC 01N .0306 Eff. December 29, 2003.

25 NCAC 01L .0207 COMPLAINTS AND DISCIPLINE

History Note: Authority G.S. 126-4;
Eff. November 1, 1990;
Recodified to 25 NCAC 01N .0307 Eff. December 29, 2003.

SECTION .0300 - EQUAL EMPLOYMENT OPPORTUNITY INSTITUTE

25 NCAC 01L .0301 RESERVED FOR FUTURE CODIFICATION

25 NCAC 01L .0302 PARTICIPATION AND PURPOSE

Supervisors and managers hired, promoted or appointed on or after July 1, 1991 shall participate in the EEOI. Supervisors and managers appointed before July 1, 1991 are encouraged to participate in the EEOI. Agencies, departments and universities shall not be authorized to conduct or contract for substitute training to replace EEOI. The purpose of the EEOI is to:

- (1) address and discuss the history and evolution of equal employment opportunity concepts and principles;
- (2) assist managers and supervisors in incorporating their equal employment opportunity responsibilities with other management responsibilities;
- (3) expose managers and supervisors to workplace equity and fairness issues; and
- (4) review and discuss accepted management practices for valuing and managing diversity in the workplace.

History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;
Amended Eff. November 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0303 RESPONSIBILITIES: AGENCIES

- (a) It is the responsibility of each state agency, department, and university (hereafter named agency) to enroll each supervisor or manager appointed on or after July 1, 1991 in the EEOI. The enrollment shall be within one year of initial appointment.
- (b) Each agency shall be responsible for providing its prorata share of the cost for supplies and resource materials.
- (c) Agencies shall be responsible for verifying candidate eligibility reports.
- (d) Agencies may enroll incumbent managers and supervisors to participate in the EEOI when space is available.
- (e) Agencies may incorporate in their new employee orientation program a module of instruction designed to familiarize new employees with the agency's commitment to equal employment opportunity.

History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;
Amended Eff. November 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0304 RESPONSIBILITIES: MANAGERS AND SUPERVISORS

Managers and supervisors shall attend and complete the EEOI in the prescribed time frame.

History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;
Amended Eff. January 1, 2005;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0305 RESPONSIBILITIES: OFFICE OF STATE PERSONNEL

History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;
Repealed Eff. January 1, 2005.

25 NCAC 01L .0306 ADMINISTRATION: DEFINITIONS

(a) "Supervisory positions" are defined as positions in which the majority of the work performed is directing the work of other positions. These employees have the authority to assign work and to evaluate work; to hire employees; to discipline or dismiss employees; or have significant input into such actions.

(b) "Managerial positions" are defined as positions which manage established divisions or subdivisions of a department, agency or university. These employees direct the work of one or more supervisors and have the authority to hire, reward, discipline, or discharge employees. These employees may also provide suggestions for changes in policy to senior executives with policy-making authority.

(c) "Executive managerial" positions are defined as policy making positions. Employees in these positions are agency/department heads, university chancellors, deputies, assistants, vice-chancellors, and other policy makers. The employees in executive managerial positions are usually appointed or elected. For the purposes of this policy, the definition of supervisors, managers, and executives also includes the setting of performance expectations, conducting performance appraisal conferences and evaluating performance.

(d) "Incumbent Executives, Managers and Supervisors" are defined as executive managers and supervisors hired or appointed into positions prior to July 1, 1991.

(e) "EEOI Candidates" are defined as:

- (1) Managers and supervisors hired on or after July 1, 1991 and who may or may not have served in a management role in state government.
- (2) Incumbent executives, managers and supervisors hired or appointed into current positions prior to July 1, 1991.
- (3) Incumbent executives, managers and supervisors promoted/appointed to a different management position on or after July 1, 1991.
- (4) Executive level managers who are hired or appointed with or without executive level experience in state government on or after July 1, 1991.

(f) "Training Level 1" is defined as the full EEOI Training designed for those managers and supervisors identified in Subparagraph (e)(1) of this Rule. Also, management level employees as identified in Subparagraphs (e)(2) and (e)(3) of this Rule may participate on a space availability basis.

(g) "Training Level 2" is defined as an abbreviated course designed for executive level managers as identified in Subparagraph (e)(4) of this Rule. Also, executive level managers as identified in Subparagraphs (e)(2) and (e)(3) of this Rule may participate on a space availability basis.

(h) "Enroll," for the purposes of this policy, shall be defined as the act of attending and completing the EEOI.

History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

25 NCAC 01L .0307 COURSE SCHEDULING AND SITE SELECTIONS

*History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;
Repealed Eff. November 1, 2004.*

SECTION .0400 – PERSONS WITH A DISABILITY

25 NCAC 01L .0401 SPECIAL PROVISIONS RELATIVE TO PERSONS WITH A DISABILITY

(a) The definitions in G.S. 168A-3 apply to this Rule.

(b) Equal employment opportunity for persons with a disability includes the making of a reasonable accommodation to the known physical limitations of a qualified applicant or employee who would be able to perform the essential duties of the job if such accommodation is made. This may include:

- (1) making facilities used by employees accessible to and usable by such person;
- (2) job restructuring (reassigning non-essential duties or using part-time or modified work schedules);
- (3) acquisition or modification of equipment or devices;
- (4) provision of readers or interpreters; or other similar actions.

Agencies shall make such adjustments for the known limitations of otherwise qualified applicants and employees with a disability unless it can be demonstrated that a particular adjustment or alteration would impose an undue hardship on the operation of the agency.

(c) Whether an accommodation is reasonable must depend on the facts in each case. Factors to be considered in determining this include:

- (1) the nature and cost of the accommodation needed;
- (2) the type of the agency's operation, including the composition and structure of its work force; and
- (3) the overall size of the agency or particular program involved, with respect to number of employees, number and type of facilities, and size of budget.

(d) Bona Fide Occupational Qualifications:

- (1) Age, sex or physical requirements may be considered if they constitute a bona fide occupational qualification necessary for job performance in the normal operations of the agency. Whether such a requirement is a bona fide occupational qualification shall depend on the facts in each case. This exemption shall be construed very narrowly and the agency shall have the burden of proving the exemption is justified.
- (2) Physical fitness requirements based upon preemployment physical examinations relating to minimum standards for employment may be a reasonable employment factor, provided that such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the particular job category, regardless of age or sex.
- (3) A differentiation may be based on a physical examination in job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by nature are particularly hazardous. Job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity and endurance would fall in this category.
- (4) To establish age, sex or physical requirements as a bona fide occupational qualification, it shall be necessary to submit a recommendation to the Office of State Human Resources setting forth all facts and justification as to why the requirement should be considered as an employment factor in each of the classifications in question.

(e) Special Provisions Relative to Communicable and Infectious Diseases:

- (1) Persons with communicable or infectious disease, including Acquired Immune Deficiency Syndrome (AIDS), are persons with a disability if the disease results in an impairment which substantially limits one or more major life activities. All of the statutory provisions relative to persons with a disability are applicable to persons with communicable and infectious diseases, including the requirements for a reasonable accommodation to the known limitations of an otherwise qualified applicant or employee.

- (2) It is not discriminatory action to fail to hire, transfer, or promote, or to discharge a person with a disability because the person has a communicable disease which would disqualify a person without a disability from similar employment. However, such action may be taken on that basis only when it has been determined necessary to prevent the spread of the communicable or infectious disease. There must be documentation of consultation with private physicians and public health officials in arriving at the determination. Concern for other employees who may fear working with the infected co-worker must never be the basis for the action, in the absence of a medically documented health hazard to other persons. There is no evidence that employing a person with AIDS would present a health hazard to other persons in the usual workplace.

History Note: Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261; Eff. October 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.