

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 223
Committee Substitute Favorable 3/23/23
Committee Substitute #2 Favorable 4/5/23
Senate State and Local Government Committee Substitute Adopted 5/28/24
Fifth Edition Engrossed 6/6/24

Short Title: OSHR/Various SHRA Changes.

(Public)

Sponsors:

Referred to:

March 1, 2023

1 A BILL TO BE ENTITLED
2 AN ACT MAKING VARIOUS CHANGES TO THE STATE HUMAN RESOURCES ACT
3 AND RELATED LAW.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 126-14.3 reads as rewritten:

6 "§ 126-14.3. Open and fair competition.

7 The State Human Resources Commission shall adopt rules or policies to:

8 ...

9 (3) Require that a closing date shall be posted for each job opening, unless an
10 exception for critical classifications has been approved by the State Human
11 Resources ~~Commission~~ Commission or as a special exception through the
12 Office of State Human Resources.

13

14 SECTION 2. G.S. 126-24 reads as rewritten:

15 "§ 126-24. Confidential information in personnel files; access to such information.

16 All other information contained in a personnel file is confidential and shall not be open for
17 inspection and examination except to the following persons:

18 (1) The employee, applicant for employment, former employee, or his properly
19 authorized agent, who may examine his own personnel file in its entirety
20 except for (i) letters of reference solicited prior to employment, or (ii)
21 information concerning a medical disability, mental or physical, that a prudent
22 physician would not divulge to a patient. An employee's medical record may
23 be disclosed to a licensed physician designated in writing by the
24 ~~employee;employee.~~

25 (2) The supervisor of the ~~employee;employee.~~

26 (2a) A potential State or local government supervisor, during the interview
27 process, only with regard to performance management ~~documents;documents~~
28 or to prevent application fraud.

29 (3) Members of the General Assembly who may inspect and examine personnel
30 records under the authority of ~~G.S. 120-19;G.S. 120-19.~~

31 (4) A party by authority of a proper court order may inspect and examine a
32 particular confidential portion of a State employee's personnel ~~file; and file.~~



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- 1 (5) An official of an agency of the federal government, State government or any
2 political subdivision thereof. Such an official may inspect any personnel
3 records when such inspection is deemed by the department head of the
4 employee whose record is to be inspected or, in the case of an applicant for
5 employment or a former employee, by the department head of the agency in
6 which the record is maintained as necessary and essential to the pursuance of
7 a proper function of said agency; provided, however, that such information
8 shall not be divulged for purposes of assisting in a criminal prosecution, nor
9 for purposes of assisting in a tax investigation.

10 Notwithstanding any other provision of this Chapter, any department head may, in his
11 discretion, inform any person or corporation of any promotion, demotion, suspension,
12 reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant,
13 employee or former employee employed by or assigned to his department or whose personnel
14 file is maintained in his department and the reasons therefor and may allow the personnel file of
15 such person or any portion thereof to be inspected and examined by any person or corporation
16 when such department head shall determine that the release of such information or the inspection
17 and examination of such file or portion thereof is essential to maintaining the integrity of such
18 department or to maintaining the level or quality of services provided by such department;
19 provided that prior to releasing such information or making such file or portion thereof available
20 as provided herein, such department head shall prepare a memorandum setting forth the
21 circumstances which the department head deems to require such disclosure and the information
22 to be disclosed. The memorandum shall be retained in the files of said department head and shall
23 be a public record."

24 **SECTION 3.** G.S. 126-10 reads as rewritten:

25 "**§ 126-10. Personnel services to local governmental units.**

26 (a) The State Human Resources Commission may make the services and facilities of the
27 Office of State Human Resources available upon request to the political subdivisions of the State.
28 The State Human Resources Commission may establish reasonable charges for the service and
29 facilities so provided, and all funds so derived shall be deposited in the State treasury to the credit
30 of the general fund.

31 (b) Notwithstanding G.S. 126-22, 126-24, 153A-98, and 160A-168, when a local entity
32 indicates that it will permanently appoint a person who does not meet the class specification's
33 minimum qualifications for a position subject to the State Human Resources Act, except for
34 trainee and work-against appointments, the Office of State Human Resources may contact any
35 relevant members of the board supervising that local entity, the county manager and
36 commissioners, and the Department of Health and Human Services. The message may identify
37 the particular qualifications that the proposed appointee would need to meet to have the minimum
38 qualifications of the class specification.

39 (c) Notwithstanding G.S. 126-22, 126-24, 153A-98, and 160A-168, when a local entity
40 requests that the Office of State Human Resources make the final determination as to whether
41 the employee or applicant meets the minimum qualifications, the Office of State Human
42 Resources may share the relevant portions of the personnel file of a specific employee or
43 applicant with the Deputy Director of the Public Health or Social Services Division of the
44 Department of Health and Human Services, or similar State departmental staff, to assist in
45 determining qualification status."

46 **SECTION 5.** G.S. 96-29 reads as rewritten:

47 "**§ 96-29. Openings listed by State agencies.**

48 Every State agency shall list with the Division of Employment Security every job opening
49 occurring within the agency which opening the agency wishes filled and which will not be filled
50 solely by promotion or transfer from within the existing State government work force. The listing
51 shall include a brief description of the duties and salary range and shall be filed with the Division

1 within 30 days after the occurrence of the opening. ~~The State agency may not fill the job opening~~
2 ~~for at least 21 days after the listing has been filed with the Division.~~ The listing agency shall
3 report to the Division the filling of any listed opening within 15 days after the opening has been
4 filled.

5 ~~The Division may act to waive the 21-day listing period for job openings in job classifications~~
6 ~~declared to be in short supply by the State Human Resources Commission, upon the request of a~~
7 ~~State agency, if the 21-day listing requirement for these classifications hinders the agency in~~
8 ~~providing essential services."~~

9 **SECTION 6.** G.S. 126-4 reads as rewritten:

10 **"§ 126-4. Powers and duties of State Human Resources Commission.**

11 Subject to the approval of the Governor, the State Human Resources Commission shall
12 establish policies and rules governing each of the following:

- 13 (1) Position classification plans which shall provide for the classification and
14 reclassification of all positions subject to this Chapter according to the duties
15 and responsibilities of the positions.
- 16 (2) Compensation plans which shall provide for minimum, maximum, and
17 intermediate rates of pay for all employees subject to the provisions of this
18 Chapter.
- 19 (3) For each class of positions, reasonable qualifications as to education,
20 experience, specialized training, licenses, certifications, and other job-related
21 requirements pertinent to the work to be performed. Classifications, class
22 qualifications, and classification specifications may be added, revised, and
23 deleted by the State Human Resources Commission, subject to the approval
24 of the Governor, or by the Director of the Office of State Human Resources
25 based on accepted labor market practices. All changes to classifications,
26 qualifications, and specifications by the Director of the Office of State Human
27 Resources shall be consistent with the classification plan structure approved
28 by the State Human Resources Commission and shall be reported to the State
29 Human Resources Commission at its next meeting that is more than five
30 business days from the date of the change.

31"

32 **SECTION 7.** The State Human Resources Commission shall adopt temporary rules,
33 followed by permanent rules, concerning the hiring and compensation of trainees for local
34 government positions that are subject to the State Human Resources Act. The Commission shall
35 submit the rules and notice of public hearing to the Codifier of Rules no later than 60 days from
36 the effective date of this act.

37 **SECTION 8.** G.S. 126-34.02(b)(4) reads as rewritten:

38 "(4) Veteran's and National Guard preference. – An applicant for State
39 employment or a State employee may allege that he or she was denied
40 veteran's preference or National Guard preference in violation of the law."

41 **SECTION 9.** G.S. 126-30(a) reads as rewritten:

42 "(a) Any employee who knowingly and willfully discloses false or misleading
43 information, or conceals dishonorable military service; or conceals prior employment history or
44 other requested information, either of which are significantly related to job responsibilities on an
45 application for State employment or any document attached to or supplementing an application
46 may be subjected to disciplinary action up to and including immediate dismissal from
47 employment. Dismissal shall be mandatory where the applicant discloses false or misleading
48 information in order to meet position qualifications. Application forms for State employment
49 shall include a statement informing applicants of the consequences of such fraudulent disclosure
50 or lack of disclosure. This statement shall also appear on any screen that allows an applicant to
51 attach materials to, or supplement, a State application."

1 **SECTION 10.** G.S. 126-6.3 reads as rewritten:

2 "**§ 126-6.3. Temporary employment needs of Cabinet and Council of State agencies; use of**
3 **the Temporary Solutions Program.**

4 ...

5 (a2) Prohibition. – The OSHR shall prohibit from acquiring new temporary employees any
6 agency or division, based on individual budget code, having an invoice owed to the OSHR that
7 is over 90 days overdue and a total overdue invoice amount exceeding two hundred thousand
8 dollars ~~(\$200,000) for any number of days. (\$200,000).~~ When an agency or division, based on
9 individual budget code, is restricted from acquiring a new temporary employee under this
10 subsection, the agency or division shall not be allowed to acquire new temporary employees
11 through the Temporary Solutions Program until the agency or division has paid all ~~overdue~~
12 ~~invoices. invoices that are over 90 days overdue.~~ The provisions of this subsection do not apply
13 to the North Carolina National Guard.

14 (a3) Exceptions. – The following exceptions apply:

15 (1) The Director of the OSHR may create exceptions to the requirements of
16 subsection (a) of this section only when the following conditions are met:

17 a. The Temporary Solutions Program cannot meet the agency's
18 employment needs for a class of temporary job assignments.

19 b. Failure to recruit for the class of temporary job assignments will cause
20 severe harm to the agency's ability to provide services to the public.

21 (2) A temporary employee who is a full-time student, a retired employee, an
22 inmate on a work-release program, an intern, or an extern is exempt from the
23 requirements of subsection (a1) of this section.

24 (3) The Director of the OSHR may create exceptions to the requirements of
25 subsection (a1) of this section only when all of the following conditions are
26 met:

27 a. The exception is in the best interests of the State because removing the
28 employee from the job assignment will cause severe harm to the
29 agency's ability to provide vital services to the public.

30 b. The exception will not result in extending the 11-month maximum
31 length of temporary employment beyond 22 months from the
32 employee's initial hire date.

33 (4) The Director of the OSHR may create exceptions to the requirements of
34 subsection (a2) of this section only when failure to acquire new temporary
35 employees will cause severe harm to the agency's ability to provide vital
36 services to the public.

37 All exceptions shall be in the sole discretion of the Director of the OSHR except that the
38 North Carolina National Guard is hereby granted preferred status for exceptions which shall not
39 be denied by the Director. All exceptions shall include a justification of why the exception is
40 necessary. An exception is invalid unless it is submitted in writing and on file in the Temporary
41 Solutions Program Office. To the extent possible, the Director of the OSHR or the Director's
42 designee shall advise agencies of alternative job classification options prior to approval of
43 exceptions to subsection (a1) of this section.

44 "

45 **SECTION 11.(a)** Pilot Program for Department of Health and Human Services to
46 Permanently Hire Certain Temporary Employees Under Specific Conditions. The North
47 Carolina Department of Health and Human Services (Department) may directly hire temporary
48 employees into vacant positions so long as all of the following conditions are met: (i) the position
49 to which the temporary employee would be appointed is vacant; (ii) the temporary employee
50 must have been working, for at least six months not including any mandatory breaks under
51 G.S. 126-6.3, in a role that is substantially equivalent to the appointed position with satisfactory

1 performance; (iii) the temporary employee must have been hired through the Temporary
2 Solutions Program of the North Carolina Office of State Human Resources (OSHR); and (iv) the
3 annual salary for the employee appointed to the position must be eighty thousand dollars
4 (\$80,000) or less. Except as otherwise provided in this section, the hiring shall be exempt from
5 Chapter 126 of the General Statutes, including any procedural or substantive requirements such
6 as publicly posting the position, requiring an application, holding an interview or new reference
7 checks, selecting the applicants from the pool of the most qualified persons, and following the
8 priorities for certain types of applicants under State law. The hiring shall not be exempt from
9 G.S. 126-14, G.S. 126-14.1, G.S. 126-14.5, and Articles 6 and 7 of Chapter 126 of the General
10 Statutes. The exemption from Chapter 126 of the General Statutes for the hiring process shall not
11 affect whether the position is subject to Chapter 126 of the General Statutes once the employee
12 is hired.

13 **SECTION 11.(b)** This section is effective when it becomes law and expires 180
14 calendar days from the date of enactment. This section continues to apply to any hiring where
15 the Department issues an offer letter, while this section is in effect, that is contingent upon
16 successful completion of any pre-requisite condition, such as a background check, reference
17 check, or drug test, that would otherwise be required of a job candidate for the appointed position,
18 even if the hiring occurs after this section otherwise expires.

19 **SECTION 11.(c)** The Department shall report to OSHR on the number and type of
20 positions filled under this temporary authority no later than July 1, 2025.

21 **SECTION 12.** Except as otherwise provided, this act is effective when it becomes
22 law.