

Regulations on the Application of Guidelines on Interpreting General Statute § 126-5(c1)(8): Instructional and Research Staff Exempt from the State Personnel Act. (Guideline #300.2.5[G])

North Carolina General Statute § 126-5(c1) [State Personnel Act] provides that the following employees are exempt from the provisions of this statute:

- (8) Instructional and research staff, physicians, and dentists of the University of North Carolina.

The North Carolina Office of State Personnel and the University of North Carolina have agreed to guidelines, (#300.2.5[G]) that govern the interpretation and application of the terms “instructional” and “research” as used in N.C.G.S. § 126-5(c1)(8).

Application of the guidelines on interpreting N.C.G.S. § 126-5(c1)(8) may require a prospective change in the status of a position from EPA (exempt from the State Personnel Act) to SPA (subject to the State Personnel Act) or vice versa. The incumbent of a position that is subject to a change in status shall have the option of requiring that the change not be made for the duration of his or her continued occupancy of the position. The incumbent shall be given no less than 15 business days to exercise the option to retain SPA/EPA status after receiving written notice from the employer that the position is subject to a change in status. Exercise of the option must be confirmed in writing cosigned by the employee and the employer, on a form that shall include a certification that the affected employee either (1) asked for and received or (2) was apprised of but declined the opportunity to receive from a staff representative designated by the employer a written summary of conclusions concerning differences, if any, between SPA and EPA status of the position with respect to:

- a. methods of calculating compensation;
- b. both statutory-mandated and other employer-provided benefits; and
- c. policies and procedures governing non-disciplinary termination of employment; discharge, suspension, demotion or other disciplinary action; and the consideration/resolution of grievances, all as of the effective date of the signed choice of option.

(A sample form is attached as Appendix A)

Once such an option has been chosen, it may not be rescinded thereafter except by mutual written agreement of the employee and the employer. An incumbent who has chosen the option to maintain the status quo thereafter may not be removed involuntarily from the position for the purpose of effecting a change in the status of the position. However, when the incumbent who chose that option thereafter vacates the position through resignation, retirement, or discharge for cause, the change in status required by application of the regulations shall be effective immediately.

[This is a rewrite of Administrative Memorandum #364¹.]

¹The section of Administrative Memorandum #364 related to the interpretation of General Statute § 126-5(c1)(8): Instructional and Research Staff Exempt from the State Personnel Act has been rewritten as Guideline #300.2.5[G].

APPENDIX A

Implementation of Employee's Option to Maintain Current Status

On _____ [date]_____, I received notice that the status of the employment position I now occupy, _____ [specify]_____, is subject to change from _____ [SPA/EPA] to _____ [EPA/SPA]. I understand that I have the option of requiring that the present _____ [EPA or SPA] status of the position not be changed during my continued occupancy of the position. I understand that if I decide to exercise the option of preserving the present status of the position, that decision is binding on me for as long as I occupy the position, unless my employer and I subsequently agree otherwise in writing.

I have _____ (1) asked for and received or _____ (2) declined the opportunity to receive from a staff representative designated by my employer a written summary of any differences in terms and conditions of employment applicable to the position, depending upon whether its status is SPA or EPA. [If option (1) is checked, the written summary is set forth in writing in an attachment to this form and should be reviewed before the employee at the appropriate space indicated; if option (2) is checked, the employee may proceed to the appropriate signature line. In either case, the instrument must be co-signed by the employee's immediate supervisor or by the next higher level administrative officer.]

The attachment indicates differences, if any, between EPA and SPA status with respect to:

- a. methods of calculating compensation;
- b. leave entitlement;
- c. entitlement to participate in statutory-mandated or other employer-sponsored payroll-deducted benefits; and
- d. policies and procedures governing nondisciplinary termination of employment; discharge, suspension, demotion or other disciplinary action; and the consideration and disposition of grievances.

_____ I do wish to exercise my option of retaining the _____ [SPA/EPA] status of the employment position I now occupy.

_____ I do not wish to exercise my option of retaining the _____ [SPA/EPA] status of the employment position I now occupy.

Employee signature

Date

Witnessed by Employer

Date