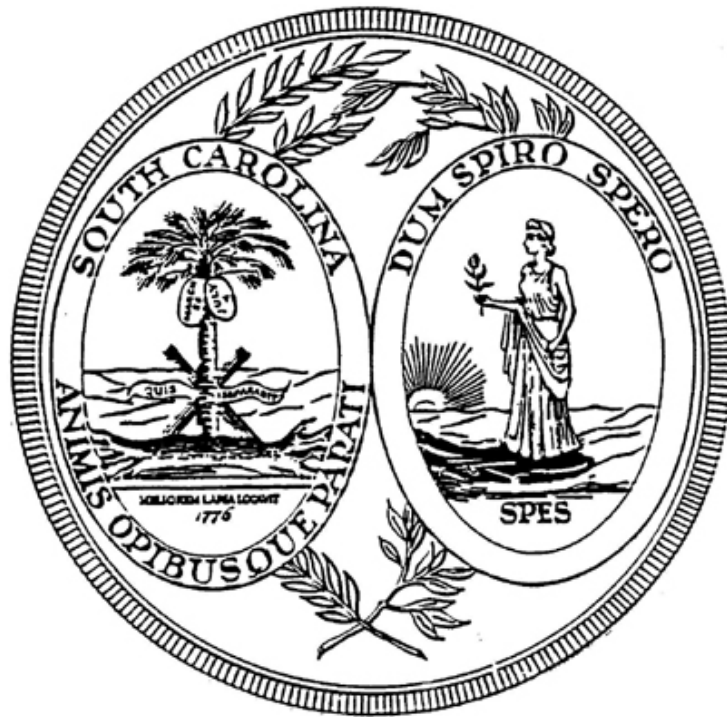


State Human Resources Regulations



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Effective September 1, 2016

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19-700 DEFINITIONS

The following definitions should be used in conjunction with these Regulations.

ACADEMIC PERSONNEL – presidents, provosts, vice-presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning or medical institutions of education and research.

AGENCY - a department, institution of higher learning, board, commission, or school that is a governmental unit of the State of South Carolina. Special purpose districts, political subdivisions, and other units of local government are excluded from this definition.

AGENCY HEAD - the person who has authority and responsibility for an agency.

AGENCY HIRE DATE – the date an employee begins employment with an agency without any adjustments.

APPEAL - the request by a covered employee to the State Human Resources Director for review of an agency's final decision concerning a grievance.

APPOINTING AUTHORITY - the agency head or other person or group of persons empowered to employ.

BASE PAY - the rate of pay approved for an employee in his position exclusive of any additional pay, such as supplements, bonuses, longevity pay, temporary salary adjustments, shift differential pay, on-call pay, call back pay, special assignment pay, or market or geographic differential pay.

BASE PERIOD - the period of time that defines the regular annual schedule of employment (e.g., either a semester, an academic year, or ten months to 12 months).

BREAK IN SERVICE – an interruption of continuous State service. An employee experiences a break in State service when the employee either (1) separates from State service; (2) moves from one State agency to another and is not employed by the receiving agency within 15 calendar days following the last day worked (or approved day of leave at the transferring agency); (3) remains on leave for a period of more than 12 months; (4) separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within 12 months of the effective date of the separation; (5) involuntarily separates from State service and the agency's decision is upheld by the State Employee Grievance Committee or by the courts; or (6) moves from a full-time equivalent (FTE) position to a temporary, temporary grant, or time-limited position.

CALENDAR DAYS - the sequential days of a year. For purposes of calculating time frames under the State Employee Grievance Procedure Act, the time must be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday, or holiday, it must be

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excluded.

CLASS - a group of positions sufficiently similar in the duties performed; degree of supervision exercised or received; minimum requirements of education or experience; and the knowledge, skills, and abilities required that the Division of State Human Resources applies the same State class title and the same State salary range to each position in the group.

CLASS/UNCLASSIFIED STATE TITLE CODE - the alphanumeric identification assigned to a particular class or unclassified State title.

CLASSIFIED POSITION – an FTE position that has been assigned to a class.

CLASSIFICATION PLAN – the classification plan as authorized by § 8-11-230 which includes the non-Higher Education classification plan and the Higher Education classification plan authorized by the Higher Education Efficiency and Administrative Policies Act of 2011.

CLASSIFIED SERVICE – all of those positions in State service which are subject to the position classification plan.

CLASS SERIES - a group of classes which are sufficiently similar in kind of work performed to warrant similar class titles, but sufficiently different in level of responsibilities to warrant different pay bands.

CLASS SPECIFICATION – the official description approved by the Division of State Human Resources providing examples of the kind of work and level of responsibility normally assigned to positions that may be allocated to the class.

CLASS TITLE - the name assigned to a class by the Division of State Human Resources.

CLASS/UNCLASSIFIED STATE TITLE DATE – the date an employee enters his current class or unclassified State title.

COMPENSATION – monetary payment for services rendered.

CONFLICT OF INTEREST - any action or situation in which an individual's personal or financial interest or that of a member of his household might conflict with the public interest.

CONTINUOUS STATE SERVICE – service with one or more State agencies without a break in service.

CONTINUOUS STATE SERVICE DATE – the date that reflects the first date of State employment without a break in service.

COVERED EMPLOYEE - a full-time or part-time employee occupying a part or all of an FTE position who has completed the probationary period and has a “meets” or higher overall rating on the employee’s performance evaluation and who has grievance rights. Instructional personnel

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are covered upon the completion of one academic year except for faculty at State technical colleges upon the completion of not more than two full academic years' duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.

DEMOTION – the assignment of an employee by the appointing authority from one established position to a different established position having a lower State salary range or, for employees in positions without a State salary range, assignment of a lower rate of pay to the employee except when the employee's job duties also are decreased for nonpunitive reasons.

DUAL EMPLOYMENT –an agreement by which an employee within an FTE position with an employing agency accepts temporary, part-time employment with the same or another agency.

EMPLOYEE - any person in the service of an agency who receives compensation from the agency and where the agency has the right to control and direct the employee in how the work is performed.

EMPLOYING AGENCY – the agency having primary control over the services of the employee.

EXEMPT EMPLOYEE - an employee who is exempt from both the minimum wage and overtime requirements of the Fair Labor Standards Act due to employment in a bona fide executive, administrative, professional, or outside sales capacity.

FULL-TIME EQUIVALENT or FTE - a numerical value expressing a percentage of time in hours and of funds related to a particular position authorized by the General Assembly.

GRIEVANCE - a complaint filed by a covered employee or the employee's representative regarding an adverse employment action taken by an agency designated in § 8-17-330 of the South Carolina Code of Laws.

HOLIDAY – any holiday recognized by State law or enumerated in the South Carolina Code of Laws § 53-5-10.

HOLIDAY COMPENSATORY TIME - leave time earned by an employee for work performed on a holiday.

IN-BAND INCREASE - a salary increase which is awarded within the pay band assigned to the employee's class.

INITIAL EMPLOYMENT - the employment of a person newly hired into State government in a classified or unclassified FTE position.

INSTRUCTIONAL PERSONNEL – for purposes of the State Employee Grievance Procedure

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Act, employees of an agency that has primarily an educational mission, excluding the State technical colleges and excluding those employees exempted in § 8-17-370 10. of the South Carolina Code of Laws, who work an academic year.

INVOLUNTARY REASSIGNMENT - the movement of an employee's principal place of employment in excess of 30 miles from the prior workstation at the initiative of the agency. The reassignment of an employee by an agency in excess of 30 miles from the prior workstation to the nearest facility with an available position having the same State salary range for which the employee is qualified is not considered involuntary reassignment.

LEAVE ACCRUAL DATE – the date used to calculate an employee's rate of annual leave earnings, which includes: (1) all State service in an FTE position, including part-time service, adjusted to reflect periods where there was a break in service; and, (2) all service as a certified employee in a permanent position of a school district of this State.

LEAVE DONOR - an employee of an employing agency whose voluntary written request for donation of sick or annual leave to the pool leave account of his employing agency is granted.

LEAVE RECIPIENT - an employee of an employing agency who has a personal emergency and is selected and approved to receive sick or annual leave from the pool leave account of his employing agency.

MEDIATION - an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and non-adversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

MEDIATION-ARBITRATION - an alternative dispute resolution process that provides for the submission of an appeal to a mediator-arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.

NONEXEMPT EMPLOYEE - an employee who is covered by the Fair Labor Standards Act and who is, therefore, subject to both the minimum wage and overtime requirements of the law.

DIVISION OF STATE HUMAN RESOURCES (DSHR) formerly referenced as the Office of Human Resources (OHR) - the central State human resources entity under the Department of Administration.

PAY BAND – for classified positions, the dollar amount between the minimum and maximum rates of pay to which a class is assigned by DSHR.

PERFORMANCE REVIEW DATE – the first day which marks the beginning of a new performance review period.

PERMANENT STATUS – the status attained by an employee upon completion of a

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probationary or trial period in a class or an unclassified State title.

PERSONNEL NUMBER (PERNR) – the employee identification number

PERSONAL EMERGENCY - a catastrophic and debilitating medical situation, severely complicated disability, severe accident case, family medical emergency, or other hardship situation that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

POSITION - those duties and responsibilities constituting a single job.

POSITION NUMBER - a unique number assigned to an FTE position by DSHR.

PROBATIONARY STATUS - the status of an employee during the probationary period.

PROBATIONARY EMPLOYEE - a full-time or part-time employee occupying a part or all of an FTE position in the initial working test period of employment with the State of 12 months' duration for non-instructional personnel, of the academic year duration for instructional personnel except for those at State technical colleges, or of not more than 2 full academic years' duration for faculty at State technical colleges. An employee who receives an unsatisfactory performance evaluation during the probationary period must be terminated before becoming a covered employee.

PROBATIONARY PERIOD - an initial working test period of employment in an FTE position with the State of not more than 12 months' duration for non-instructional personnel or the academic year duration for instructional personnel except for those at State technical colleges, or of not more than 2 full academic years' duration for faculty at State technical colleges. An employee who receives an unsatisfactory performance evaluation during the probationary period must be terminated before becoming a covered employee.

PROMOTION – the assignment of an employee by the appointing authority from one established position to a different established position having a higher State salary range or, for positions without a State salary range, having a higher rate of pay. Failure to be selected for a promotion is not an adverse employment action that can be considered as a grievance or appeal.

PUNITIVE RECLASSIFICATION – for classified employees, the assignment of a position in one class to a different class with a lower pay band with the sole purpose to penalize the covered employee.

REALLOCATION – for classified positions, the assignment of all positions in a class from one pay band to another pay band.

REASSIGNMENT - the movement within an agency of an employee from one position to another position having the same State salary range, or the movement of a position within an agency which does not require reclassification.

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RECLASSIFICATION – for classified positions, the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position.

REDUCTION IN FORCE - the procedure used by an agency to eliminate or reduce a portion of one or more filled FTE positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, organizational changes or outsourcing/privatization.

REEMPLOYMENT - the employment of a person following a break in service in an FTE position.

REINSTATEMENT - the return of an employee to State service without a break in service. Examples include return resulting from: (1) the Reduction in Force procedure; (2) the reversal of a termination under the State Employee Grievance Procedure Act; (3) the settlement of a complaint negotiated under an authorized administrative agency; or, (4) the order of a court.

REQUESTING AGENCY – for dual employment purposes, the agency engaging the services of and compensating any employee for services which are clearly not a part of the employee's regular job.

RESIGNATION – written or oral notification by an employee of his relinquishment of employment.

SEPARATION – action initiated by either the agency or employee which ends the employment relationship.

SHIFT DIFFERENTIAL - the additional amount of pay awarded to employees who are assigned to an evening, night, weekend, rotating, or split-shift.

STATE EMPLOYEE GRIEVANCE COMMITTEE - the committee composed of State employees who are appointed by the Director of the Department of Administration and who conduct hearings involving appeals filed by covered employees.

STATE HIRE DATE - the first date of State employment in an FTE position adjusted to reflect periods when there were breaks in service.

STATE HUMAN RESOURCES DIRECTOR - the head of the Division of State Human Resources of the Department of Administration, or his designee who is responsible for statewide coordination of human resources programs.

STATE SALARY RANGE – the dollar amount between the minimum and maximum rates of pay as established by DSHR.

STATE SERVICE - total employment defined in years, months, and days in which an employee has occupied an FTE position, including part-time service.

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SUPERVISOR - an individual who directs one or more subordinates and is designated as the rater on those subordinates' performance evaluations.

SUPPLEMENT – any compensation, excluding travel reimbursement, from an affiliated public charity, foundation, clinical faculty practice plan, or other public source or any supplement from a private source to the salary appropriated for a State employee and fixed by the State.

SUSPENSION - an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

TEACHERS - individuals employed in instructional positions for which certification is required.

TEMPORARY EMPLOYEE - a full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and who is not a covered employee.

TEMPORARY GRANT EMPLOYEE - a full-time or part-time employee who does not occupy an FTE position and is hired to fill a position specified in and funded by a federal grant, public charity grant, private foundation grant, or research grant and who is not a covered employee.

TEMPORARY POSITION - a full-time or part-time non-FTE position created for a period of time not to exceed one year.

TEMPORARY SALARY ADJUSTMENT - compensation not included in an employee's base salary that is awarded for a limited period of time.

TERMINATION – for purposes of the State Employee Grievance Procedure Act, the action taken by an agency against an employee to separate the employee involuntarily from employment.

TIME-LIMITED PROJECT EMPLOYEE - a full-time or part-time employee who does not occupy an FTE position who is hired to fill a position with time-limited project funding approved or authorized by the appropriate State authority, and who is not a covered employee.

TRANSFER - the movement to a different agency of an employee from one position to another position having the same State salary range, or the movement of a position from one agency to another agency which does not require reclassification.

TRIAL PERIOD – the initial working test period of six months required of a covered employee upon movement to any class or an unclassified State title in which the employee has not held permanent status.

TRIAL STATUS – the status of a full-time or part-time covered employee who is in the initial working test period of six months following the movement of the employee or the employee's

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position to any class or unclassified State title in which the employee has not held permanent status.

UNCLASSIFIED POSITION – an FTE position that has been assigned to an unclassified State title.

UNCLASSIFIED SERVICE – all those positions in the State service which are not subject to the position classification plan.

UNCLASSIFIED STATE TITLE - the name assigned to an unclassified position or to a group of similar positions by the Division of State Human Resources.

WORKDAY (AVERAGE) – the number of hours upon which leave and holidays are based. To determine the number of hours in an average workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

19-701 GENERAL RULES

SCOPE AND PURPOSE

Human Resources Regulations Sections 19-700 through 19-720 are applicable to all agencies that are not specifically exempted by § 8-11-260 of the South Carolina Code of Laws.

19-701.01 EQUAL EMPLOYMENT OPPORTUNITY

The State of South Carolina is an equal employment opportunity employer.

19-701.02 CONSTRUCTION OF WORDS

All words in these Regulations referencing the masculine gender shall apply to females as well. All words in these Regulations referencing "written," "in writing," or similar language shall also apply to electronic documents.

19-701.03 STATE AND FEDERAL LAWS

These Regulations are in addition to the requirements of applicable State and federal laws.

19-701.04 AUDITS BY THE DIVISION OF STATE HUMAN RESOURCES (DSHR)

All information and documentation required by these Regulations are subject to audit by DSHR.

19-701.05 CENTRAL HUMAN RESOURCES DATA SYSTEM

As required by § 8-11-230 of the South Carolina Code of Laws, DSHR provides a central database to maintain human resources data on all employees. To maintain the integrity and completeness of the system, all agencies are required to submit appropriate information in a timely manner.

19-701.06 ETHICS ACT

The Ethics Act governs the employment of family members and conflicts of interest. For additional information consult the Ethics Act (§ 8-13-100 through § 8-13-1520 of the South Carolina Code of Laws), the Ethics Commission opinions, and the State Ethics Commission.

A. Employment of Family Members

No public official, public member, or public employee may cause the employment, appointment, promotion, reassignment, transfer, or advancement of a family member to a State or local office or position in which the public official, public member, or public employee supervises or manages. Family member means an individual who is (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-

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in-law, grandparent, or grandchild, or (b) a member of the individual's immediate family. Immediate family is defined as follows:

1. A child residing in a candidate's, public official's, public member's, or public employee's household;
2. A spouse of a candidate, public official, public member, or public employee; or
3. An individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, or public employee's spouse as a dependent for income tax purposes.

B. Conflict of Interest

No employee may accept any work or compensation that could be reasonably construed as a conflict of interest. Acceptance without proper prior approval of work assignment or compensation that is found to be a conflict of interest may be grounds for disciplinary action or termination. The propriety of an employment situation or compensation for services rendered shall be considered by all parties concerned. Counsel from the Office of the Attorney General or the State Ethics Commission may be necessary to make such determinations.

19-701.07 EMPLOYMENT OUTSIDE OF STATE GOVERNMENT

Agencies may adopt policies and procedures for the approval and regulation of jobs held by employees outside of State government. Such policies shall be in accordance with law and the policies and procedures of the Department of Administration. An agency may withdraw approval for such secondary employment for reasonable work-related issues.

19-701.08 SOLICITATION AND DISTRIBUTION

Solicitations and distributions by agency employees or outside individuals are generally prohibited on agency property during working hours. Each agency is responsible for enforcing this Regulation to minimize the disruption of agency business. For example, agencies may allow for fund raising activities by charitable organizations which are certified by the Secretary of State. Any fund raising activities must be approved by the agency head or his designee and conducted under agency supervision.

19-701.09 PILOT PROGRAMS TO CREATE INNOVATION IN STATE GOVERNMENT

Notwithstanding other provisions of law, the Department of Administration is authorized to enter into pilot programs with individual agencies or groups of agencies in order to create innovations in State government. The Department of Administration will monitor the findings and results of pilot programs to determine if legislative recommendations should be provided to the General Assembly.

19-701.10 FTE POSITIONS

An employee may not occupy more than one FTE position.

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19-702 CLASSIFICATION PLAN

SCOPE AND PURPOSE

This Regulation governs the establishment, maintenance, and administration of the Classification Plan as defined in 19-700 applicable to all positions in the classified service.

19-702.01 STATEMENTS OF POLICY

- A. The Department of Administration designates the State Human Resources Director to administer all Department of Administration policies and procedures relating to the Classification Plan.
- B. The Division of State Human Resources (DSHR) shall establish the Classification Plan to consist of (1) all approved classes of positions, (2) the allocation of each position to its proper class, (3) the class specifications for all approved classes of positions, and (4) the Regulations and procedures governing the administration of the Classification Plan.
- C. A class shall be established for each broad category of work and its level of difficulty and responsibility.
- D. Each class shall be defined by a class specification and shall be assigned to an appropriate pay band.
- E. The Division of State Human Resources will maintain a list of approved classes.
- F. No action shall be taken to fill any position until it has been authorized by the General Assembly and established in accordance with the Classification Plan. When establishing a classified position, DSHR assigns a position number, class title, class code, slot number, and pay band.
- G. A position may move between the classified and unclassified systems provided the agency does not exceed its respective number of classified and unclassified authorized full-time equivalent (FTE) positions. (*Refer to Section 19-704.08.*)
- H. The Division of State Human Resources is authorized to delegate to agencies by written agreement classification programs that are described in this Regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Department of Administration policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between DSHR and the requesting agency and may be terminated or altered at the discretion of DSHR.
- I. The State Human Resources Director shall have the authority to make exceptions to these Regulations.

19-702.02 ADMINISTRATION OF THE PLAN

- A. The State Human Resources Director shall administer the Classification Plan.
- B. Before an agency fills or alters a position, DSHR must approve the following actions:
 - 1. The initial classification of the position;
 - 2. The reclassification of the position; or
 - 3. The creation of new classes and the revision or abolishment of existing classes.
- C. The Division of State Human Resources shall coordinate periodic studies to ensure that the Classification Plan is current and uniform.
- D. As requested, agencies must submit to DSHR all current position descriptions, organizational charts, and other information as needed to administer the classification plan.

19-702.03 CLASS SPECIFICATIONS

- A. Each class specification shall describe in general terms examples of the kind of work and level of responsibility normally assigned positions that may be allocated to the class. The exact duties and responsibilities of positions allocated to any one class may differ; however, all positions allocated to a class shall be sufficiently similar as to kind of work, level of difficulty or responsibility, and qualification requirements.
- B. The Division of State Human Resources shall develop class specifications which include the following:
 - 1. Class Title and Code
 - 2. General Nature of Work - the brief statement summarizing the work to be performed by individuals in this class.
 - 3. Guidelines for Class Use/Distinguishing Characteristics - the brief statement summarizing the level of work performed, the breadth of job responsibilities, and level of supervision given or received. This section may be omitted if it is not needed for further clarification.
 - 4. Examples of Work - statements of duties that reflect responsibility common to positions in the class, but not necessarily fully descriptive of any one position in the class.
 - 5. Knowledge, Skills and Abilities - a list of individual characteristics each of which is required for the successful performance of one or more job duties of the class, but not

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- necessarily fully descriptive of the requirements for any one position in the class.
6. Necessary Special Requirements - statements of professional or physical requirements, such as licensure or certification, which may be mandatory for some or all positions in the class. This section may be omitted if it is not needed for further clarification.
 7. Minimum Requirements - a statement of the minimum combination of education and experience required for the satisfactory performance of the duties of positions in the class, but not necessarily fully descriptive of the education and experience required for any one position in the class. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.
- C. Current class specifications shall be maintained by DSHR. The Division of State Human Resources will notify agencies of any revisions and additions to the class specifications.

19-702.04 POSITION DESCRIPTIONS

- A. The Division of State Human Resources shall develop a position description to be used by agencies in describing assigned duties and other information necessary to determine the proper classification of each position. An agency may develop a position description which must be approved by DSHR prior to implementation.
- B. The position description shall serve as a record of the duties assigned to an individual position in a class. The position description is used to compare positions to ensure uniformity of classification and as a basis for other human resources decisions.
- C. The position description shall include an accurate description of assigned duties and responsibilities and other pertinent information concerning a position. In contrast to general definitions of the level of work and responsibilities, the position description shall include specific duties and responsibilities assigned to a position, the percentage of time normally devoted to each duty, and the designation of essential and marginal functions.
- D. Position descriptions should be updated to reflect any changes in the assigned job duties and responsibilities or any other pertinent information concerning the position. The supervisor should discuss this updated position description with the employee.
- E. Agencies shall submit current position descriptions to DSHR. Current position descriptions shall be maintained by both the agency and DSHR.

19-702.05 RECLASSIFICATION OF POSITIONS

- A. An established position may be reclassified from one class to a different class as a result of a natural or an organizational change in the duties or responsibilities of the position.

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- B. When reclassifying a filled position, the assignment of new duties or responsibilities should not have the effect of creating a new position.
- C. The Division of State Human Resources shall approve all reclassifications.

19-702.06 POSITION NUMBERING SYSTEM

The Division of State Human Resources shall develop and maintain a position numbering system that will identify each established position.

19-703 JOB VACANCY ANNOUNCEMENTS

SCOPE AND PURPOSE

This Regulation governs the announcement of vacancies in all positions in the classified service.

19-703.01 STATEMENTS OF POLICY

- A. The Department of Administration designates the Division of State Human Resources(DSHR)to administer all policies and procedures relating to the South Carolina Code of Laws, § 8-11-120, Report of Job Vacancies.
- B. Applicants selected for hiring must meet the minimum requirements of the class as established by DSHR unless the State Human Resources Director has approved an equivalency.

19-703.02 REPORT OF JOB VACANCIES

- A. In addition to any other requirement provided by law, when a job vacancy occurs in any state office, agency, department, or other division of the executive branch of state government, the appointing authority must post a notice with the Division of State Human Resources of the Department of Administration and the South Carolina Department of Employment and Workforce at least five working days before employing a person to fill the vacancy. The posting must give notice of the job vacancy, describe the duties to be performed by a person, employed in that position and include any other information required by law.
- B. The notification of a vacancy must include the following data:
 - 1. The title of the position and a summary description of the job responsibilities for the vacant position if needed for clarification;
 - 2. The entry salary or State salary range for the vacant position;
 - 3. The name of the agency where the vacant position exists;
 - 4. A description of the application process for the vacant position;
 - 5. Residency requirements, if any, for the vacant position;
 - 6. The class code and the position number of the vacant position;
 - 7. The minimum requirements for the vacant position, as well as preferred qualifications, if any:

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- a. For the purpose of reporting a job vacancy, minimum requirements are the minimum training and experience requirements that are established by the agency for the vacant position. An agency's minimum training and experience requirements shall be either the minimum requirements that DSHR has established for the class or additional requirements established by the agency that are directly related to the successful performance of essential job functions as described on the position description. Any additional requirements must exceed the minimum requirements that DSHR has established for the class.
 - b. Preferred qualifications are defined as any other qualifications that are desirable, but not mandatory, for the performance of essential job functions upon entry into the position;
8. The opening and closing dates for applying for the vacant position;
 9. A statement certifying that the employing agency is an equal employment opportunity/affirmative action employing agency; and
 10. The normal work schedule and whether the position is full-time or part-time.

19-703.03 INTERNAL POSTING AND DISTRIBUTION OF ANNOUNCEMENTS

The agency must notify employees where the vacancy exists. If the vacancy is a promotional opportunity that requires work experience within the agency to qualify for the promotion, notice of the vacancy must be posted for five workdays, and the notice does not have to be sent to the South Carolina Department of Employment and Workforce or to the Division of State Human Resources.

19-703.04 EXEMPTIONS TO POSTING JOB ANNOUNCEMENTS

- A. If an emergency situation exists requiring the vacancy to be filled immediately, certification of the emergency must be made to and approved by the agency head or his designee waiving the posting requirement at the agency and State level.
- B. When an agency decides to promote an employee one organizational level above the employee's current level, the posting requirement may be waived.

19-703.05 FREEDOM OF INFORMATION ACT REQUESTS

A public body may, but is not required to, exempt from disclosure all materials, regardless of form, gathered by the public body during a search to fill an employment position, except that materials relating to the final pool of applicants under consideration comprised of at least three people for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item, materials relating to the final pool of applicants

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comprised of at least three people, do not include an applicant's income tax returns, medical records, social security number, or information otherwise exempt from disclosure by § 30-4-40 of the South Carolina Code of Laws.

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19-704 MOVEMENT AND STATUS

SCOPE AND PURPOSE

This Regulation governs the movement of classified and unclassified employees and positions. This Regulation also governs the status of classified and unclassified employees except those employees exempt from coverage under the State Employee Grievance Procedure Act.

19-704.01 STATEMENTS OF POLICY

A. Movement of a person into or between full-time equivalent (FTE) positions may occur by:

1. Initial Employment or Reemployment
2. Promotion
3. Demotion
4. Reassignment
5. Transfer

(Refer to Sections 19-704.02 through 19-704.05.)

B. Movement of a position may occur through a reclassification in the classified system or an unclassified State title change in the unclassified system. *(Refer to Sections 19-704.06 and 19-704.07.)*

C. A position may move between the classified and unclassified systems provided the agency does not exceed its number of classified and unclassified authorized FTEs. *(Refer to Section 19-704.08.)*

D. A person who moves into or between an FTE position(s) in the classified system must meet minimum requirements established in the class specification. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.

E. When a person moves into or between an FTE position(s) or when an employee's position is reclassified or has an unclassified State title change, the following types of status apply:

1. Probationary – The status of a full-time or part-time employee occupying all or part of an FTE position in the initial working test period of employment with the State of:

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- a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. Covered – The status of a full-time or part-time employee occupying all or part of an FTE position who has completed the probationary period and has a “meets” or higher overall rating on the employee’s performance evaluation and has grievance rights. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee.
 3. Trial – The status of a full-time or part-time covered employee who is in the initial working test period of six months following the movement of the employee or the employee’s position to any class or unclassified State title in which the employee has not held permanent status.

F. Permanent Status in a Class or Unclassified State Title

An employee shall attain permanent status in a class or unclassified State title upon completion of a probationary or trial period in that class or unclassified State title. Once attained, permanent status in a class or unclassified State title is retained throughout the employee’s continuous State service.

G. Performance Review Dates

For the establishment of an employee’s performance review date, refer to Sections 19-715.02 through 19-715.04.

19-704.02 INTIAL EMPLOYMENT OR REEMPLOYMENT

- A. Initial employment is defined as the employment of a person newly hired into State government in a classified or unclassified FTE position.
- B. Reemployment is defined as the employment of a person following a break in service in a classified or unclassified FTE position.
- C. Probationary Status

Upon initial employment or reemployment the employee shall be in probationary status.

D. Probationary Period

1. An employee in probationary status must complete a probationary period of:

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- a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in any temporary capacity toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
 3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

19-704.03 PROMOTION

A. Promotion is defined as the assignment of an employee by the appointing authority from one established position to a different established position:

1. Having a higher State salary range; or
2. For positions without a State salary range, having a higher rate of pay.

B. Probationary or Trial Status

Upon promotion, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class or unclassified State title to which promoted, the promotion shall be with permanent status in the class or unclassified State title and the employee is not in trial status.

C. Probationary Period

1. An employee in probationary status who is promoted must complete a probationary period of:
 - a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward

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the employee's probationary period which would result in a reduction in the length of the employee's performance review period.

3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

D. Trial Period

A covered employee who is promoted to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.04 DEMOTION

- A. Demotion is defined as the assignment of an employee by the appointing authority from one established position to a different established position:

1. Having a lower State salary range; or
2. For employees in positions without a State salary range, assignment of a lower rate of pay to the employee except when the employee's job duties also are decreased for nonpunitive reasons.

B. Probationary or Trial Status

Upon demotion, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the class or unclassified State title to which demoted, the demotion shall be with permanent status in the class or unclassified State title and the employee is not in probationary or trial status.

C. Probationary Period

1. An employee in probationary status who is demoted must complete a probationary period of:
 - a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward

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the employee's probationary period which would result in a reduction in the length of the employee's performance review period.

3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

D. Trial Period

A covered employee who is demoted to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.05 REASSIGNMENT AND TRANSFER

A. Reassignment is defined as the movement within an agency of an employee from one position to another position having the same State salary range, or the movement of a position within an agency which does not require reclassification.

B. Transfer is defined as the movement to a different agency of an employee from one position to another position having the same State salary range, or the movement of a position from one agency to another agency which does not require reclassification.

C. Probationary or Trial Status

Upon reassignment or transfer, an employee shall be in probationary or trial status; however, a covered employee with permanent status in the class or unclassified State title is not in probationary or trial status when the reassignment or transfer:

1. Does not change the employee's class or unclassified State title; or
2. Is to a class or unclassified State title in which the employee already holds permanent status in the class or unclassified State title.

D. Probationary Period

1. An employee in probationary status who is reassigned or transferred must complete a probationary period of:
 - a. Twelve months' duration for noninstructional personnel;
 - b. The academic year duration for instructional personnel (teachers); or
 - c. Not more than two full academic years' duration for faculty at State technical colleges.

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2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period. If the reassignment or transfer is not to a new class or unclassified State title, the employee's probationary period shall not change.
3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

E. Trial Period

A covered employee who is reassigned or transferred to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended by the agency head up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.06 RECLASSIFICATION

For classified positions, reclassification is defined as the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position. Reclassifications can occur:

A. Upward – The position moves from one class to another class having a higher State salary range.

1. Probationary or Trial Status

Upon upward reclassification, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the upward reclassification shall be with permanent status in the class and the employee is not in trial status.

2. Probationary Period

a. An employee in probationary status whose position is reclassified upward must complete a probationary period of:

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

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- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee who is reclassified upward to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

- B. Downward – The position moves from one class to another class having a lower State salary range.

1. Probationary or Trial Status

Upon downward reclassification, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the downward reclassification shall be with permanent status in the class and the employee is not in trial status.

2. Probationary Period

- a. An employee in probationary status whose position is reclassified downward must complete a probationary period of:
 - (1) Twelve months' duration for noninstructional personnel;
 - (2) The academic year duration for instructional personnel (teachers); or
 - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

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A covered employee who is reclassified downward to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

C. Lateral – The position moves from one class to another class having the same State salary range.

1. Probationary or Trial Status

Upon lateral reclassification, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the lateral reclassification shall be with permanent status in the class and the employee is not in trial status.

2. Probationary Period

a. An employee in probationary status whose position is reclassified laterally must complete a probationary period of:

(1) Twelve months' duration for noninstructional personnel;

(2) The academic year duration for instructional personnel (teachers); or

(3) Not more than two full academic years' duration for faculty at State technical colleges.

b. At his discretion the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.

c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee who is reclassified laterally to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.07 UNCLASSIFIED STATE TITLE CHANGES

An unclassified State title change is defined as the assignment of a position in one unclassified State title to another unclassified State title which is the result of a natural or an organizational change in duties or responsibilities of the position. An unclassified State title change can occur:

A. Upward – The position moves from one unclassified State title to another unclassified State title having a higher State salary range or for a position without a State salary range, the position moves from one unclassified State title to another unclassified State title with higher level job duties or responsibilities as defined by the agency.

1. Probationary or Trial Status

Upon upward unclassified State title change, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the upward move shall be with permanent status in the unclassified State title and the employee is not in trial status.

2. Probationary Period

a. An employee in probationary status whose position is moved upward must complete a probationary period of:

(1) Twelve months' duration for noninstructional personnel;

(2) The academic year duration for instructional personnel (teachers); or

(3) Not more than two full academic years' duration for faculty at State technical colleges.

b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.

c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee whose position is moved upward to an unclassified State title in which he has not held permanent status must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

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- B. Downward – The position moves from one unclassified State title to another unclassified State title having a lower State salary range or for a position without a State salary range, the position moves from one unclassified State title to another unclassified State title with lower level job duties or responsibilities as defined by the agency.

1. Probationary or Trial Status

Upon downward unclassified State title change, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the downward move shall be with permanent status in the unclassified State title and the employee is not in trial status.

2. Probationary Period

- a. An employee in probationary status whose position is moved downward must complete a probationary period of:

(1) Twelve months' duration for noninstructional personnel;

(2) The academic year duration for instructional personnel (teachers); or

(3) Not more than two full academic years' duration for faculty at State technical colleges.

- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.

- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee whose position is moved downward to an unclassified State title in which he has not held permanent status must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

- C. Lateral – The position moves from one unclassified State title to another unclassified State title having the same State salary range or an equivalent level of job duties or responsibilities as defined by the agency.

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1. Probationary or Trial Status

Upon lateral unclassified State title change, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the lateral move shall be with permanent status in the unclassified State title and the employee is not in trial status.

2. Probationary Period

a. An employee in probationary status whose position is moved laterally must complete a probationary period of:

(1) Twelve months' duration for noninstructional personnel;

(2) The academic year duration for instructional personnel (teachers); or

(3) Not more than two full academic years' duration for faculty at State technical colleges.

b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.

c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee whose position is moved laterally to an unclassified State title in which he has not held permanent must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

19-704.08 MOVEMENT BETWEEN CLASSIFIED SERVICE AND UNCLASSIFIED SERVICE

A. Classified Service to Unclassified Service

1. Movement of the Employee

a. When an employee moves from a classified position to an unclassified position with a State salary range, the employee's status will be governed by Regulations 19-704.03 through 19-704.05 concerning the promotion, demotion, reassignment, or transfer of an unclassified employee.

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- b. When an employee moves from a classified position to an unclassified position without a State salary range, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the movement will be a promotion, demotion, reassignment, or transfer, and the employee's status will be governed by Sections 19-704.03 through 19-704.05.

2. Movement of the Position

- a. When the position an employee occupies moves from the classified service to the unclassified service, the employee's status will be governed by Regulation 19-704.07 concerning the movement of unclassified positions.
- b. When the position an employee occupies moves from classified service to become an unclassified position without a State salary range, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the employee's status will be governed by Section 19-704.07 concerning the movement of unclassified positions.

B. Unclassified Service to Classified Service

1. Movement of the Employee

- a. When an employee moves from an unclassified position with a State salary range to a classified position, the employee's status will be governed by Sections 19-704.03 through 19-704.05 concerning the promotion, demotion, reassignment, or transfer of classified employees.
- b. When an employee moves from an unclassified position without a State salary range to a classified position, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the movement will be a promotion, demotion, reassignment, or transfer, and the employee's status will be governed by Sections 19-704.03 through 19-704.05.

2. Movement of the Position

- a. When the position an employee occupies moves from the unclassified service to the classified service, the employee's status will be governed by Section 19-704.06 concerning the reclassification of positions.
- b. When the position an employee occupies changes from an unclassified position without a State salary range to become a classified position, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination,

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the employee's status will be governed by Section 19-704.06 concerning the reclassification of positions.

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19-705 CLASSIFIED EMPLOYEE PAY PLAN

SCOPE AND PURPOSE

This Regulation governs the establishment, maintenance, and administration of the Pay Plan applicable to all positions in the classified service.

19-705.01 STATEMENTS OF POLICY

- A. The Department of Administration designates the State Human Resources Director to administer all Department of Administration policies and procedures relating to the Pay Plan.
- B. The Division of State Human Resources (DSHR) shall establish and maintain a Pay Plan to consist of (1) the official classification listing, (2) the official pay bands, and (3) the Regulations and procedures governing the administration of the Pay Plan.
- C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head's salary range or the agency head's actual salary, whichever is greater, except on approval of the State Fiscal Accountability Authority. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.
- D. The Division of State Human Resources is authorized to delegate to agencies by written agreement pay programs that are described in this Regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Department of Administration policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between DSHR and the requesting agency and may be terminated or altered at the discretion of DSHR.
- E. When an employee moves from an unclassified position to a classified position, the employee's pay will be governed by the classified pay plan.
- F. An agency requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.
- G. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.
- H. An agency shall maintain documentation appropriate for the administration of this Regulation.

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- I. Prior to implementation, agencies shall develop any written policies described in these Regulations to govern the administration of salary increases and decreases.
- J. The State Human Resources Director shall have the authority to make exceptions to Section 19-705.

19-705.02 ADMINISTRATION OF THE PAY PLAN

- A. The Division of State Human Resources periodically shall conduct studies for the purpose of making recommendations that will maintain a competitive Pay Plan.
- B. An employee shall be paid within the pay bands in accordance with the provisions of this Regulation.
- C. An employee shall not be paid in excess of the maximum of the pay band for a class, unless such payment is authorized by this Regulation.
- D. Any pay action which requires approval from DSHR must receive such approval prior to an agency effecting the action.
- E. Prior to submission to DSHR for approval, the agency human resources shall review all proposed pay changes to determine that they are in compliance with the provisions of this Regulation.

19-705.03 HIRING SALARIES

- A. Hiring at the Minimum - An employee must be paid at least the minimum of the pay band for the class to which hired.
- B. Hiring Above the Minimum
 - 1. Exceptional Qualifications – If an individual is exceptionally qualified for the position, DSHR may authorize a salary for the individual at a rate above the minimum of the pay band for the class based on written justification submitted by the agency.
 - 2. Special Hire Rate – Based on written justification submitted by the agency, the Division of State Human Resources may approve a special hire rate when experience has shown that recruitment of qualified applicants for selected positions in a class has not been possible at the minimum of the pay band.

19-705.04 SALARY INCREASES

- A. Agencies shall develop written policies to govern the administration of salary increases for employees.

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- B. Legislative Increase – General and Merit Increases shall be provided to employees in accordance with the provisions of the annual Appropriation Act.
- C. In-Band Salary Increase - Written justification for awarding an in-band salary increase shall be maintained by the employing agency. An employee's salary may be increased within his current pay band for the following reasons:
1. Performance Increase – An agency may increase an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such increase shall be determined by the agency. A performance increase shall not place an employee's salary above the maximum of the pay band.
 2. Additional Skills or Knowledge Increase - An in-band increase may be granted when an employee gains additional skills or knowledge directly related to the job. An employee's salary may be increased by up to 15% for the acquisition of additional skills or knowledge, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.
 3. Additional Job Duties or Responsibilities Increase - An in-band increase may be granted when an employee is assigned additional job duties or broader responsibilities, either within his current position or as a reassignment to another position in the same pay band in the employing agency. An employee's salary may be increased by up to 15% for the recognition of the additional job duties or responsibilities, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to DSHR for approval. Should the additional job duties or responsibilities be removed from the employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of the additional job duties or responsibilities increase. *(For removal of additional job duties or responsibilities, refer to Section 19-705.05 B. 2.)*
 4. Transfer Increase - An in-band increase may be granted when an employee accepts a position within another agency which is in the same pay band as his current position. An employee's salary may be increased by up to 15% for the recognition of a transfer, provided such increase does not place the employee's salary above the maximum of the pay band.
 5. Retention Increase - An in-band increase may be granted when an employee has a bona fide job offer from another employer, either within or outside of State government, and an agency wishes to retain the services of this employee in his current position. An employee's salary may be increased by up to 15% for the purpose of retention, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15% for employees who have bona fide job offers outside of State government, the agency

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must submit written justification to DSHR for approval. An employee shall receive no more than one retention increase in a one-year period.

D. Salary Increases Resulting from Upward Band Changes - An employee's salary may be increased as a result of movement to a higher pay band for the following reasons:

1. Promotional Increase

- a. Upon promotion, the employee must be paid at least the minimum of the pay band of the class to which promoted.
- b. Upon promotion, an employee's salary may be increased by up to 15% of his salary prior to promotion, or to the midpoint of the new pay band, whichever is greater. For an increase of more than 15% and above the midpoint of the pay band, the agency must submit written justification to DSHR for approval. Such increase shall not place the employee's salary above the maximum of the new pay band.

2. Reclassification Increase

- a. When an employee's position is reclassified to a class with a higher pay band, the employee's salary shall be increased to at least the minimum of the pay band of the class to which reclassified.
- b. Upon reclassification, an employee's salary may be increased by up to 15% of the salary prior to reclassification, provided such increase does not place the employee's salary above the maximum of the new pay band. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.

3. Reallocation Increase - When DSHR reallocates a class to a higher pay band:

- a. An employee in that class shall receive a salary increase at least to the new minimum of the new pay band; or
- b. An employee in that class may receive up to a 15% salary adjustment provided such increase does not place an employee's salary above the maximum of the new pay band.

E. An employee is not eligible to receive a salary increase upon downward reclassification or demotion.

F. Return from Leave Without Pay - An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that the employee shall be granted any legislative increases authorized during the employee's leave of absence. In determining the amount of

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adjustment that the employee shall be granted, the same implementation instructions that applied to all employees in that class shall be followed.

19-705.05 SALARY DECREASES

A. Agencies shall develop written policies to govern the administration of salary decreases for employees.

B. In-Band Salary Decreases - Written justification for effecting any salary decrease shall be maintained by the employing agency. An employee's salary may be decreased within his current pay band for the following reasons:

1. Performance Decrease – An agency may decrease an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such decrease shall be determined by the agency. Performance decreases must not place an employee's salary below the minimum of the pay band. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation.

2. Removal of Additional Job Duties or Responsibilities

Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded or prior to the end of the trial period, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. Such decrease in salary is not grievable or appealable under the State Employee Grievance Procedure Act.

3. Assignment of Lower Level Responsibilities

a. Voluntary Reason - An employee who is voluntarily assigned lower level responsibilities or moved to a position in his current pay band with lower level responsibilities than his current position, may, at the discretion of the agency head or his designee, be paid at any rate within the pay band provided the rate is equal to or below the current salary and provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.

b. Involuntary Reason – A covered employee who is involuntarily assigned lower level responsibilities or moved to a position in his current pay band with lower level responsibilities than his current position, shall not have his salary reduced for a period of six months from the date of the action unless an exception is approved by the Department of Administration or his designee. After the expiration of the six-month period, with the approval of the agency head, or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. An employee exempt from the

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State Employee Grievance Procedure Act, who is involuntarily assigned lower level responsibilities, may have his salary reduced no more than 15% or to the midpoint of the pay band, whichever is lower, immediately following the assignment of lower level responsibilities.

If the employee's salary is allowed to remain above the maximum of the pay band, the employee shall not be eligible for pay increases unless:

- (1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
- (2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.

C. Salary Decreases Resulting from Downward Band Changes - Written justification for effecting any salary decrease shall be maintained by the employing agency. An employee's salary may be decreased as a result of movement to a lower pay band for the following reasons:

1. Demotion and Downward Reclassification Decreases

- a. Voluntary Reason - An employee who voluntarily has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head or his designee, be paid at a salary equal to or below the current salary. However, the rate must be within the lower pay band and the employee must sign a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.
- b. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head, be paid at a rate equal to or below the current salary, but within the lower pay band.
- c. Involuntary or Non-Disciplinary Reason – When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reclassified to a class in a lower pay band for these reasons, the employee's salary shall not be reduced for a period of six months from the date of the demotion or downward reclassification unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily demoted or downwardly reclassified may have his salary reduced no more than 15% or to the midpoint of the pay band, whichever is lower, immediately

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following the demotion or downward reclassification.

If the employee's salary is allowed to remain above the maximum of the lower pay band, the employee shall not be eligible for pay increases unless:

- (1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
 - (2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.
- d. An employee who is promoted or his position is reclassified upward, and subsequently demoted or his position is reclassified downward prior to attaining permanent status in a class of a higher pay band, shall have a reduction in pay as follows:
- (1) When an employee is demoted or his position is reclassified to the previous class or to a class with the same pay band held prior to promotion or reclassification, or to a class with a lower pay band, the employee's salary will be reduced by the amount previously received upon promotion or upward reclassification provided the salary will not exceed the maximum of the pay band for the class to which demoted or downwardly reclassified.
 - (2) When an employee is demoted or his position is reclassified downward to a class having a higher pay band than the original position, the employee's salary will be reduced by the amount previously received upon promotion or reclassification and the employee's new salary will be established in accordance with Section 19-705.04 D.

2. Downward Band Reallocation

When a class is reallocated to a lower pay band, the pay of an employee shall not be changed as a result of this action for a period of six months from the date of the action unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. If the employee's salary exceeds the maximum of the new pay band, the employee shall not be eligible for pay increases of any type unless:

- a. Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
- b. The employee is subsequently promoted or his position is reclassified, and his current rate of pay is below the maximum of the pay band for the class to which promoted or reclassified.

19-705.06 SPECIAL SALARY ADJUSTMENTS

The State Human Resources Director is authorized to approve pay actions outside the provisions of Section 19-705.04 and 19-705.05 if circumstances warrant such approval.

19-705.07 COMPENSATION NOT INCLUDED IN BASE SALARY

- A. Temporary Salary Adjustment – The Division of State Human Resources is authorized to approve a temporary salary adjustment for an employee in a full-time equivalent (FTE) position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.
- B. Shift Differential Pay - The Division of State Human Resources may approve the additional payment of a shift differential for classifications of employees in the entire agency or any portion of the agency assigned to an evening, night, weekend, rotating, or split shift. To qualify the shift for approval, the majority of hours of the shift must be outside the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. The employee’s pay shall be adjusted by the amount approved, even if such amount increases the employee’s salary above the maximum of the pay band for the class.
- C. On-Call Pay - On-call pay is pay by the employing agency for classifications of employees in the entire agency or any portion of the agency to remain available to return to work within a specified period of time. The Division of State Human Resources must approve on-call pay for employees.
- D. Call Back Pay - Call back pay is pay by the employing agency for an employee to report to work either before or after normal duty hours to perform emergency services. Each agency shall determine which groups of employees shall be subject to call back. Nonexempt employees shall be compensated for hours worked as a result of a call back at their regular hourly rate plus any shift differential for which they might be eligible and such time shall be counted in computing any overtime that may be due. When an employee to be called back for emergency services which require less than two hours on the job, or when no work is available when he reports, the employee shall be compensated a minimum of two hours. An employee shall not receive call back pay if:
 - 1. The call back has been canceled and the employee received notice in advance not to report to work, or
 - 2. The employee refuses alternate work that is offered upon reporting to work.
- E. Special Assignment Pay – The Division of State Human Resources may approve additional compensation to classifications of employees in the entire agency or any

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portion of the agency for periods of time when he is on special assignment if circumstances warrant such approval based on guidelines established by DSHR.

- F. Market or Geographic Differential Pay - The Division of State Human Resources may approve Market or Geographic Differential Pay for classifications of employees in the entire agency or any portion of the agency for periods of time when circumstances warrant such approval.
- G. Bonuses – The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Department of Administration in the administration of bonus programs.
- H. Longevity Pay

The Longevity Salary Increase Program was discontinued in 1986. Individuals awarded longevity increases prior to the discontinuance of the program will continue to receive such previously awarded increases until termination of employment with State government. To calculate a salary increase for an employee who is presently receiving longevity pay, an agency shall:

1. Deduct the longevity increase from the total compensation;
 2. Calculate the increase on the reduced salary in accordance with applicable provisions of Section 19-705.03; and
 3. Add the longevity increase to the new salary.
- I. Grant Salary Adjustment - The Division of State Human Resources is authorized to approve a grant salary adjustment for an employee in an FTE position if circumstances warrant such approval. The grant salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.

19-705.08 EFFECTIVE DATES OF SALARY CHANGES

- A. The effective date of all salary changes provided in this Regulation shall be no earlier than the date the action is approved by the appropriate authority.
- B. Retroactivity

Agencies must comply with Article III, § 30 of the South Carolina Constitution regarding retroactivity.
- C. Concurrent Increases

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1. When general increases and other salary increases are awarded on the same date, the general increase shall be applied prior to any other salary increases.
2. When performance pay increases under § 8-11-940 of the South Carolina Code of Laws and salary increases other than general increases are awarded on the same date, the performance pay increases shall be applied prior to any other salary increases.

19-706 ESTABLISHMENT OF UNCLASSIFIED POSITIONS AND THE UNCLASSIFIED EMPLOYEE PAY PLAN

SCOPE AND PURPOSE

This Regulation governs the establishment, maintenance, and administration of the Unclassified Pay Plan applicable to all unclassified positions, except athletics coaches and unclassified employees in the athletics department of post secondary educational institutions as defined in § 59-107-10 of the South Carolina Code of Laws except the technical education colleges.

19-706.01 CATEGORIES OF UNCLASSIFIED POSITIONS

- A. An unclassified position is a full-time equivalent (FTE) position that has been assigned to an unclassified State title and falls under one of the following categories: 1) agency head covered by the Agency Head Salary Commission, 2) Executive Compensation System, 3) academic personnel, or 4) unclassified other.
- B. The compensation of agency heads covered by the Agency Head Salary Commission is addressed in Section 19-706.04 A.
- C. The compensation of employees in positions covered by the Executive Compensation System is governed by Section 19-706.04 B.
- D. Academic personnel are defined by § 8-11-220 of the South Carolina Code of Laws as “presidents, provosts, vice presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning, or medical institutions of education and research.” The compensation of employees in positions in the category of academic personnel is governed by Section 19-706.04 C. Presidents who are covered by the Agency Head Salary Commission are not subject to the Regulations pertaining to academic personnel.
- E. Positions in the category of Unclassified Other include:
 - 1. Agency heads not covered by the Agency Head Salary Commission;
 - 2. Staff of the Governor’s office;
 - 3. Teachers;
 - 4. Such other personnel employed by the institutions of higher learning and/or medical institutions of education and research as are recommended by the respective governing bodies and approved by the Department of Administration;
 - 5. Other positions as the General Assembly may elect to exempt.

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The compensation of employees in positions in the category of Unclassified Other is governed by Section 19-706.04 D.

19-706.02 STATEMENTS OF POLICY

- A. The Department of Administration designates the State Human Resources Director to administer all Department of Administration policies and procedures relating to the unclassified State titles and compensation of employees in unclassified positions.
- B. The Division of State Human Resources shall develop and maintain a position numbering system that will identify each unclassified position.
- C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head's salary range or the agency head's actual salary, whichever is greater, except on approval of the State Fiscal Accountability Authority. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.
- D. All pay actions which require approval from DSHR must receive such approval prior to an agency effecting the actions.
- E. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.
- F. All employees in unclassified positions with State salary ranges shall be paid within their respective range and the provisions of Section 19-706.
- G. An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that the employee may be granted any legislative increases made during the employee's absence. In determining the amount of adjustment that the employee may be granted, the same implementation instructions that applied to all other employees in the same unclassified category shall be followed.
- H. A position may move between the classified and unclassified systems provided the agency does not exceed its respective number of classified and unclassified authorized FTEs. (*Refer to Section 19-704.08.*)
- I. When an employee moves from a classified position to an unclassified position, the employee's pay will be governed by the unclassified pay plan.
- J. The Division of State Human Resources is authorized to delegate to agencies by written agreement the establishment of unclassified positions within authorized limits and changes to the unclassified State title. Agencies with a delegation agreement shall

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comply with State and federal laws and regulations, Department of Administration policies and guidelines, and the provisions contained in delegation agreement. The delegation agreement shall constitute a contractual relationship between DSHR and the requesting agency and may be terminated or altered at the discretion of DSHR.

- K. An agency's requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.
- L. An agency shall maintain documentation appropriate for administration of these Regulations.
- M. Prior to implementation, agencies shall develop any written policies described in these Regulations to govern the administration of salary increases and decreases.
- N. The State Human Resources Director shall have the authority to make exceptions to Section 19-706.

19-706.03 ADMINISTRATION OF THE PAY PLAN

- A. The Division of State Human Resources will coordinate with agencies to develop, implement, and maintain unclassified State titles which appropriately identify and distinguish between unclassified positions.
- B. An unclassified position should be authorized by the General Assembly and established by DSHR. When establishing an unclassified position, DSHR assigns a position number, unclassified State title and code, slot number, and State salary range, if applicable.
- C. The Division of State Human Resources has the authority to designate a classified position as unclassified for purposes of initially placing positions in the Executive Compensation System.
- D. The Division of State Human Resources may, as appropriate, conduct studies of unclassified positions with State salary ranges for the purpose of making recommendations that will maintain a competitive pay plan.
- E. The State Human Resources Director is authorized to approve pay actions outside the provisions of Section 19-706 for employees other than agency heads if circumstances warrant such approval.

19-706.04 HIRING SALARIES, SALARY INCREASES, AND SALARY DECREASES FOR EMPLOYEES IN UNCLASSIFIED POSITIONS

- A. Agency Heads Covered by the Agency Head Salary Commission

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The compensation of agency heads covered by the Agency Head Salary Commission is governed by the Commission and the State Fiscal Accountability Authority.

B. Executive Compensation System

1. Hiring Salaries for Employees in the Executive Compensation System

- a. Hiring at the Minimum - An employee must be paid at least the minimum of the State salary range for the position.
- b. Hiring Above the Minimum – An employee may be hired at a salary up to the midpoint of the State salary range for the position if circumstances warrant such approval. The Department of Administration may authorize payment of a salary above the midpoint of the State salary range for the position based on written justification submitted by the agency.
- c. Entry into the Executive Compensation System - Upon movement into the new position, the employee is eligible for up to a 15% salary increase or up to the midpoint of the State salary range for the new position, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range. The Department of Administration may authorize exceptions based on written justification submitted by the agency.

2. Salary Increases for Employees in the Executive Compensation System

- a. Written justification for awarding salary increases shall be maintained by the agency.
- b. In-Range Increases
 - (1) Legislative Increase – An annual pay increase shall be provided to the Executive Compensation System employees in accordance with the provisions of the annual Appropriation Act.
 - (2) Performance Increase - An agency may increase an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such an increase shall be determined by the agency. A performance increase shall not place an employee's salary above the maximum of the State salary range.
- c. Salary Increases Upon Promotion
 - (1) Upon promotion, an employee's salary must be at least the minimum of the State salary range for the position to which promoted.
 - (2) Upon promotion, an employee's salary may be increased up to 15% or up to

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the midpoint of the State salary range for the position to which promoted, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range. The Department of Administration may authorize exceptions based on written justification submitted by the agency.

- d. Salary Increases Upon Upward Reevaluation
 - (1) When an occupied position is reevaluated and is assigned a higher State salary range, the employee's salary must be at least the minimum of the new State salary range.
 - (2) Upon an upward reevaluation, an employee's salary may be increased up to 15% or up to the midpoint of the State salary range, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range.
3. Salary Decreases for Employees in the Executive Compensation System
 - a. Written justification for effecting any salary decrease shall be maintained by the agency.
 - b. Performance Decrease – An agency may decrease an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Performance decreases may not place an employee's salary below the minimum of the State salary range. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation, and the salary decrease shall be determined by the agency.
 - c. Salary Decreases Upon Demotion or Downward Reevaluation
 - (1) Voluntary Reason - An employee, who is voluntarily demoted to a position with a lower State salary range or who voluntarily has his position reevaluated to a lower State salary range, may at the discretion of the agency head or his designee, be paid at any salary equal to or below the current salary. However, the salary must be within the lower State salary range, and the employee must sign a written statement indicating agreement to the salary decrease. The signed document with justification should be maintained by the agency.
 - (2) Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or an unsatisfactory rating on an EPMS evaluation, has his position reevaluated to a lower State salary range or is demoted to a position with a lower State salary range, may, at the discretion of the agency head, be paid at any salary within the lower State salary range provided the salary is equal to or below the current salary, but must be within the lower State salary range.

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- (4) Involuntary or Non-Disciplinary Reason - When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reevaluated to a lower State salary range for these reasons, the employee's salary shall not be reduced for a period of six months from the date of the demotion or downward reevaluation unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the State salary range, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily demoted or whose position is downwardly reevaluated may have his salary reduced no more than 15% or to the midpoint of the pay State salary range, whichever is lower, immediately following the demotion or downward reevaluation.

If the employee's salary is allowed to remain above the maximum of the lower State salary range for the position, the employee shall not be eligible for pay increases unless:

- (a) Subsequent pay adjustments establish the maximum of the State salary range above the employee's rate of pay; or
- (b) The employee is subsequently promoted or his position is reevaluated and his current salary is below the maximum of the State salary range for the position.

C. Academic Personnel

1. Hiring Salaries for Employees in the Category of Academic Personnel

Agencies may determine hiring salaries for unclassified employees in the category of academic personnel. Agencies should consider comparable positions and market data for the occupational area when setting initial hiring salaries for employees in this category.

2. Salary Increases for Employees in the Category of Academic Personnel

- a. Agencies shall develop written policies to govern the administration of salary increases for academic personnel in unclassified positions. Written justification for awarding salary increases shall be maintained by the agency.
- b. A legislative increase shall be provided to academic personnel in accordance with the provisions of the annual Appropriation Act.
- c. Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.

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- (1) The acquisition of additional skills or knowledge directly related to the job;
 - (2) The assignment of additional job duties or responsibilities;
 - (3) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. For an increase of more than 15%, the employee must have a bona fide job offer outside of State government and the request must be submitted to DSHR for approval. An employee shall receive no more than one retention increase in a one-year period;
 - (4) The need to address internal equity or equity with the external market;
 - (5) Promotion to a higher level position - The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or
 - (6) Assignment of higher level job duties or responsibilities as defined by the agency which results in a change in unclassified State title.
- d. As provided in an agency's faculty promotion policy, the agency may develop policies for rank promotions for faculty. Such increases shall be determined by the agency.
 - e. A performance increase may be awarded to an employee in accordance with § 8-1-160 of the South Carolina Code of Laws. Such increases shall be determined by the agency.
3. Demotions and Salary Decreases for Employees in the Category of Academic Personnel

Agencies shall develop written policies to govern the administration of salary decreases for academic personnel. Written justification for effecting any salary decrease shall be maintained by the agency.

- a. Performance or Disciplinary Decrease – An agency may decrease an employee's salary based upon performance or disciplinary reasons. Performance decreases should be based on the results of a performance evaluation. Any salary decrease shall be determined by the agency.
- b. Removal of Additional Job Duties or Responsibilities - Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. For academic personnel covered

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by the State Employee Grievance Procedure Act, this decrease in salary is not grievable or appealable if the removal of the duties and subsequent salary decrease occur within six months of the date the salary increase was awarded. (Refer to Section 19-718.)

c. Demotion and Assignment of Lower Level Responsibilities

(1) Voluntary Reason - An employee, who is voluntarily demoted or is voluntarily assigned to lower level responsibilities within his current position, may be paid at a rate which is agreed upon by the employee and the agency provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.

(2) Involuntary Reason –

(a) Academic Personnel Covered by the State Employee Grievance Procedure Act

- i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on a performance evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.
- ii. An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of six months from the date of the action unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head, the employee's salary may not be reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.

(b) Academic Personnel Exempt from the State Employee Grievance Procedure Act

An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.

4. Administrative Salary Adjustment

Institutions of higher learning may award administrative salary adjustments to unclassified academic personnel during periods of time when they are assigned

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additional administrative responsibilities related to their role as Dean, Assistant Dean, Associate Dean, or Department Chairman. Administrative salary adjustments are not considered part of the employee's base salary. An agency may award an administrative salary adjustment of up to 15%. For an increase of more than 15% or for an increase related to administrative responsibilities other than those listed above, the agency must submit written justification to DSHR for approval.

5. Summer Employment for Academic Personnel of State Institutions of Higher Learning
 - a. Summer employment is not considered dual employment, which covers additional compensation earned during an employee's base period of employment. Therefore, summer employment may occur over any specified period of time between May and September of a calendar year.
 - b. All institutions of higher learning should develop policies and procedures for governing academic personnel who are teaching summer sessions outside of their base period of employment. Institutions of higher learning should consider comparable positions and market data for the occupational area when determining compensation for summer teaching. The rate of pay should be comparable to the preceding academic year and may not exceed 40% of the employee's annualized salary. Written justification for any exceptions should be submitted to DSHR for approval.
 - c. Academic personnel shall be compensated at the same rate of pay as the immediately preceding academic year for sponsored research or other activities performed during the summer months (between academic years) which are not related to a regular summer session.
 - d. Institutions of higher learning shall maintain records of all agreements pertaining to summer employment.

D. Unclassified Other

1. Unclassified Other (Agency Heads Not Covered By the Agency Head Salary Commission)

Agency heads not covered by the Agency Head Salary Commission shall have their salary established in accordance with relevant legislation.

2. Unclassified Other (Teachers)

Agencies shall pay all teachers the appropriate salary and any increases provided by the salary schedule of the school district in which the agency is located.

3. Unclassified Other (Non-Teachers)

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a. Hiring Salaries for Employees in the Category of Unclassified Other (Non-Teachers)

Agencies may determine hiring salaries for employees in the category of unclassified other (non-teachers). Agencies should consider comparable positions and market data for the occupational area when setting hiring salaries for employees in these unclassified positions.

b. Salary Increases for Employees in the Category of Unclassified Other (Non-Teachers)

(1) Written justification for awarding salary increases shall be maintained by the agency.

(2) A legislative increase shall be provided to employees in the category of unclassified other (non-teachers) in accordance with the provisions of the annual Appropriation Act.

(3) Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to DSHR for approval.

(a) The acquisition of additional skills or knowledge directly related to the job;

(b) The assignment of additional job duties or responsibilities;

(c) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. For an increase of more than 15%, the employee must have a bona fide job offer outside of State government and the request must be submitted to DSHR for approval. An employee shall receive no more than one retention increase in a one-year period;

(d) The need to address internal equity or equity with the external market;

(e) Promotion to a higher level position. The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or

(f) Assignment of higher level job duties or responsibilities which results in a change in unclassified State title.

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- (4) A performance increase may be awarded to an employee in accordance with § 8-1-160 of the South Carolina Code of Laws. Such increases shall be determined by the agency.
- c. Demotions and Salary Decreases for Employees in the Category of Unclassified Other (Non-Teachers)

Agencies shall develop written policies to govern the administration of salary decreases for employees in the category of unclassified other (non-teachers). Written justification for effecting any salary decrease shall be maintained by the agency.

- (1) Performance Decrease – An agency may decrease an employee’s salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation, and the salary decrease shall be determined by the agency.
- (2) Removal of Additional Job Duties or Responsibilities - Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded or prior to the end of the trial period, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. Such decrease in salary is not grievable or appealable under the State Employee Grievance Procedure Act.
- (3) Demotion or Assignment of Lower Level Responsibilities
 - (a) Voluntary Reason - An employee, who is demoted or is voluntarily assigned to lower level responsibilities within his current position, may be paid at a rate which is agreed upon by the employee and the agency provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.
 - (b) Involuntary Reason –
 - i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.
 - ii. A covered employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of

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six months from the date of the action unless an exception is approved by the Department of Administration. After the expiration of the six-month period, with the approval of the agency head or his designee, the employee's salary may not be reduced by more than 15%. An employee exempt from the State Employee Grievance Procedure Act, who is demoted or involuntarily assigned lower level responsibilities, shall not have his salary reduced by more than 15% immediately following the demotion or assignment of lower level responsibilities.

For a decrease of more than 15%, the agency must submit written justification to DSHR for approval.

19-706.05 COMPENSATION NOT INCLUDED IN BASE SALARY

- A. Temporary Salary Adjustment – The Division of State Human Resources is authorized to approve a temporary salary adjustment for an employee in an FTE position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.
- B. Bonuses – The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Department of Administration in the administration of bonus programs.
- C. Grant Salary Adjustment – The Division of State Human Resources is authorized to approve a grant salary adjustment for an employee in an FTE position if circumstances warrant such approval. The grant salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.
- D. Special Assignment Pay – The Division of State Human Resources may approve additional compensation to classifications of employees in the entire agency or any portion of the agency for periods of time when he is on special assignment if circumstances warrant such approval based on guidelines established by DSHR

19-706.06 EFFECTIVE DATES OF SALARY CHANGES

- A. The effective date of all salary changes provided in Sections 19-706.04 and 19-706.05 shall be no earlier than the date the action is approved by the appropriate authority.
- B. Retroactivity

Agencies must comply with constitutional provisions regarding retroactivity.
- C. Concurrent Increases

When general increases and other salary increases are awarded on the same date, the

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general increase shall be applied prior to any other salary increases.

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19-707 HOURS OF WORK AND OVERTIME

SCOPE AND PURPOSE

This Regulation governs the hours of work and overtime policies for employees.

19-707.01 HOURS OF WORK

- A. No agency shall have less than a 37.5-hour workweek. Generally, the core hours that an agency shall remain open for business are 8:30 a.m. to 5:00 p.m., Monday through Friday.
- B. The minimum full-time workweek for employees of agencies is 37.5 hours. The agency may vary an employee's work schedule through the use of alternative scheduling strategies including telecommuting to meet the needs and service delivery requirements of the agency.
- C. The agency may require an employee to work additional hours when responsibilities of the agency cannot be accomplished in the normal work hours observed by the agency.
- D. Each agency is required to keep an accurate record of all employee's scheduled hours of work and leave taken. Leave shall be recorded in the appropriate categories and shown as either leave with or without pay. The agency head has the ultimate responsibility for the accuracy and proper maintenance of hours of work and leave records.

19-707.02 OVERTIME - COMPENSATORY TIME

- A. The Division of State Human Resources (DSHR) develops an overtime model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's overtime policy.
- B. Each agency shall develop an overtime policy and establish procedures that will ensure compliance with federal and state laws, including the Fair Labor Standards Act (FLSA).
- C. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purposes of applying FLSA.
- D. For overtime purposes the two categories of employees are: (a) nonexempt (overtime provisions of FLSA do apply) and (b) exempt (overtime provisions of FLSA do not apply). The exempt or nonexempt status of any employee must be determined by the agency based on the provisions of FLSA. It is the responsibility of the agency head or his designee to determine whether an exemption is applicable to a particular employee.
- E. Workweek is seven consecutive 24-hour periods, i.e., 168 consecutive hours designated by the employing agency.

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Exception - In the case of law enforcement personnel or fire protection and emergency medical personnel, these categories of employees have work schedules up to 28 consecutive 24-hour periods, i.e., 672 consecutive hours designated by the employing agency.

- F. Hours worked are all hours that an employee is permitted to work for the employing agency. Hours worked include time during which an employee is necessarily required to be on the employing agency's premises, on duty, or at a prescribed work place. Hours worked do not include leave with or without pay or holidays when an employee does not actually work.
- G. Overtime is actual hours worked in excess of 40 hours in a given seven consecutive day period as determined by the employing agency. The Fair Labor Standards Act contains special provisions for determining when overtime is earned by employees in certain job categories. These categories include:
 - 1. Fire protection and emergency medical personnel;
 - 2. Law enforcement (including security personnel in correctional institutions);
 - 3. Hospitals or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or the disabled that reside on the premises; and
 - 4. Employees who are compensated for overtime using the fluctuating workweek method of payment for overtime as defined by FLSA which must be approved by DSHR prior to implementation.
- H. Generally a nonexempt employee should not incur overtime; however, overtime may be permitted when authorized by the agency.
- I. Compensatory time is an acceptable alternative to overtime compensation for employees.
 - 1. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time, and exempt employees shall not be paid for unused compensatory time. Nonexempt employees shall be paid out for any unused compensatory time prior to transferring to another agency.
 - 2. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time at a rate of compensation not less than the higher of:
 - a. The average regular rate received by such employee during the last three years of the employee's employment, or
 - b. The final regular rate received by such employee.
- J. Nonexempt Employee Procedures

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1. Payment for Overtime

Nonexempt employees shall either be paid or given compensatory time for hours worked in excess of 40 hours in a given work period of seven consecutive days. For hours worked in excess of 40 in an established workweek of seven consecutive days, payment for overtime or the accrual of compensatory time shall be at the rate of time and one-half the employee's regular rate, computed on the basis of a 40-hour workweek. (*Refer to Exceptions in Section 19-707.02 G.*)

2. Compensatory Time

- a. A nonexempt employee engaged in public safety work, emergency response work, or seasonal work may not accumulate more than 480 hours of compensatory time. Any employee who has accumulated 480 hours of compensatory time shall be paid overtime for additional hours of work.
- b. A nonexempt employee engaged in work other than public safety work, emergency response work, or seasonal work, may not accumulate more than 240 hours of compensatory time. Any employee who has accumulated 240 hours of compensatory time shall be paid overtime for additional hours of work.

3. Recordkeeping for Nonexempt Employees

Each agency must maintain the following information for nonexempt employees.

- a. Name;
- b. Home address;
- c. Date of birth if under 19 years of age;
- d. Gender and occupation;
- e. Employee workweek, including time of day and day of week on which the employee's workweek begins;
- f. Regular hourly rate of pay for any week when overtime is worked and overtime pay is due;
- g. Hours worked each workday and total hours worked each week;
- h. Total daily or weekly straight-time wages for all hours worked;
- i. Total overtime excess compensation for the workweek;

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- j. Total additions or deductions from wages each pay period;
- k. Total wages paid each pay period;
- l. Date of payment and pay period covered;
- m. The number of hours of compensatory time earned each workweek, or other applicable work period, by each employee at the rate of 1 1/2 hours for each overtime hour worked;
- n. The number of hours of such compensatory time used each workweek or other applicable work period by each employee; and
- o. The number of hours of compensatory time compensated in cash, the total amount paid, and the date of such payment.

K. Exempt Employee Procedures

1. No Payment for Overtime

Exempt employees shall not be paid overtime.

2. Compensatory Time

If allowed by an agency's overtime policy, exempt employees may receive compensatory time for hours worked in excess of 40 in the workweek. If granted, compensatory time must not be at a rate greater than one hour of compensatory time for each hour worked in excess of 40 in the workweek. Under no circumstances shall an exempt employee accumulate more compensatory time than FLSA allows for a nonexempt employee.

L. Employment at More Than One State Agency

When a nonexempt employee is employed at more than one State agency, each employing agency shall calculate separately the hours worked by the employee. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purpose of applying FLSA; therefore, the agencies where the individual is employed should jointly determine whether such a nonexempt employee is owed any overtime compensation during a workweek. (*For information on dual employment, refer to Section 19-713.*)

M. Volunteers

Time spent as a volunteer is not included in hours worked. An employee may volunteer services for an agency or a political subdivision of the State, if a) the individual does not receive compensation, paid expenses, benefits, or a nominal fee for services for which the

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individual volunteered, and b) such services are not the same type of services which the individual is employed to perform for such public agency. An employee of a public agency which is a state, political subdivision of a state, or an interstate governmental agency may volunteer services for any other state, political subdivision, or interstate governmental agency including a state, political subdivision or interstate governmental agency with which the employing agency has a mutual aid agreement.

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19-708 HOLIDAYS

SCOPE AND PURPOSE

This Regulation governs the observance of holidays by employees in full-time equivalent (FTE) positions.

19-708.01 ELIGIBILITY

All employees in FTE positions shall be allowed to observe with pay those holidays listed in Section 19-708.02.

19-708.02 LEGAL HOLIDAYS

State Holidays

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
George Washington's Birthday/President's Day	Third Monday in February
Confederate Memorial Day	May 10
National Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday Following Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25
Day after Christmas	December 26

19-708.03 HOLIDAY OBSERVANCE PROCEDURE

- A. Holidays are to be taken on the prescribed day unless the agency requires the employee to work. The agency shall give employees who must work on holidays prior notice if possible.
- B. When a holiday falls on a Saturday or Sunday, it shall be observed on the preceding Friday or the following Monday, respectively, by employees working a Monday through Friday schedule. Employees shall observe the holiday on the designated day or receive holiday compensatory time.
- C. Employees in FTE positions who do not work a normal Monday through Friday workweek shall receive no more nor any fewer number of holidays than those employees who work the normal Monday through Friday workweek.
- D. The length of an employee's holiday is computed based on the number of hours in the employee's average workday. To determine the number of hours in a holiday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).
- E. When a holiday falls during a period of leave with pay, that day will be counted as a holiday, not as a day of leave.
- F. Employees who are on leave without pay the day before a holiday shall not be paid or receive holiday compensatory time for holidays falling during this period of leave without pay.
- G. The holiday schedules of public colleges and universities, including technical colleges, shall not be in violation of this Section so long as the number of holidays provided in this Section are not exceeded.

19-708.04 HOLIDAY COMPENSATORY TIME

- A. An employee, except an employee of an agency following an academic schedule, who is required by the agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency within 90 days of such holiday.
- B. An employee of an agency which follows an academic schedule who is required by the agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency within one year from the date of the holiday.
- C. An employee who must work a portion of the holiday due to a shift that begins on one day and ends on another shall be granted holiday compensatory time equal to all hours worked on the holiday.
- D. All nonexempt employees who are not allowed to take holiday compensatory time earned

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for working on a holiday within the 90-day period, or the one-year period in the case of employees who follow academic schedules, shall be compensated for the holiday by the employing agency at the straight hourly pay rate of the employee. Exempt employees shall not be paid for unused holiday compensatory time. An agency head or designee may extend the 90-day period for an additional 90 days because of limited staffing.

E. All nonexempt employees shall be compensated for all holiday compensatory time upon separation from employment. Nonexempt employees shall be paid out for any unused holiday compensatory time prior to transferring to another agency. Exempt employees shall not be paid for unused holiday compensatory time upon separation of employment.

F. Holiday Compensatory Time Records

Records shall be maintained for all employees who receive holiday compensatory time. Information contained in the record must include:

1. Compensatory time earned and used in terms of hours; and
2. The number of hours per week the employee is normally scheduled to work and the employee's average workday.

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19-709 ANNUAL LEAVE

SCOPE AND PURPOSE

This Regulation governs the annual leave policies for employees in full-time equivalent (FTE) positions.

19-709.01 ELIGIBILITY

A. Annual leave shall be earned by and granted to:

1. Full-time employees in FTE positions, and
2. Part-time employees in FTE positions who are:
 - a. Scheduled to work at least one-half the workweek of the agency on a 12 month basis, or
 - b. Scheduled to work the equivalent of one-half of the workweek during the full school or academic year of nine months or more.

B. This Regulation shall not apply to teaching personnel and officials of academic rank at institutions of higher learning.

19-709.02 ANNUAL LEAVE EARNINGS

A. Computation

1. Employees who are in pay status one-half or more but not all of the workdays of the month shall earn annual leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no annual leave.
2. Employees shall earn annual leave while on annual leave, sick leave, or other authorized leave with pay. Employees shall not earn annual leave while on leave without pay.
3. Employees' annual leave earnings are computed based on the number of hours in the employee's workday.
4. Employees' annual leave earnings are based on the employee's leave accrual date. The leave accrual date reflects:
 - a. All State service in an FTE position, including part-time service, adjusted to reflect periods when there was a break in service;
 - b. All service as a certified employee in a permanent position of a school district of

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this State; and

- c. At the discretion of the agency head or his designee, all service in any temporary capacity counted towards the employee's probationary period. (*Refer to Section 19-704.02 D. 2.*)

B. Rate of Earnings

1. Five-Day Workweek Schedule of 37.5 or 40 Hours Per Week

- a. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

- b. Service of Ten Years or Less

Employees on a five-day workweek schedule with service time of less than ten years shall earn annual leave at the rate of 1¼ workdays per month of service in each calendar year. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date.

- c. Service of More Than Ten Years

Employees on a five-day per workweek schedule with State service time of more than ten years shall earn a bonus of 1¼ workdays of annual leave for each year of service over ten years. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date.

Chart #1

Five Days, 37.5 Hours Per Workweek Schedule
(may be rounded to the nearest two decimal places)

<u>Years of Service</u>	<u>Days Per Year</u>	<u>Earning Rate</u> <u>Hours Per Month</u>
1-10	15.00	9.375
11	16.25	10.156
12	17.50	10.937
13	18.75	11.718
14	20.00	12.500
15	21.25	13.281
16	22.50	14.062
17	23.75	14.843
18	25.00	15.624

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19	26.25	16.406
20	27.50	17.187
21	28.75	17.968
22 & over	30.00	18.750

Chart #2

Five Days, 40 Hours Per Workweek Schedule
(may be rounded to the nearest two decimal places)

<u>Years of Service</u>	<u>Days Per Year</u>	<u>Earning Rate Hours Per Month</u>
1-10	15.00	10.000
11	16.25	10.833
12	17.50	11.666
13	18.75	12.500
14	20.00	13.333
15	21.25	14.167
16	22.50	15.000
17	23.75	15.833
18	25.00	16.667
19	26.25	17.500
20	27.50	18.333
21	28.75	19.167
22 & over	30.00	20.000

2. Schedules Other Than a Five-Day Workweek of 37.5 or 40 Hours Per Week

All employees earn the number of days per year based on their years of service. However, the earning rate in hours per month varies according to the length of the workday. If the workday differs from eight hours, divide the number of hours in the workday by eight, then multiply this ratio by the earnings rate in the last column of Chart #2 above. Examples of such schedules could include:

- a. Law enforcement employees who are regularly scheduled to work 43 hours per week. Forty-three hours divided by five equals a workday of 8.6 hours;
- b. Fire protection employees who are regularly scheduled to work 53 hours per week. Fifty-three hours divided by five equals a workday of 10.6 hours;
- c. Part-time employees who are regularly scheduled to work 20 hours per week. Twenty hours divided by five equals a workday of four hours; or
- d. Full-time employees who are regularly scheduled to work 39 hours per week. Thirty-nine hours divided by five equals a workday of 7.8 hours.

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C. Maximum Accrual and Carryover

1. Employees shall be permitted to carryover from one calendar year to the next any unused annual leave up to a total accumulation of 45 workdays; EXCEPT THAT, employees of an agency which provided for maximum accumulation in excess of 45 workdays as of June 2, 1972, shall not forfeit the excess, but shall retain excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.
2. An employee who changes from being full-time to part-time or from part-time to full-time, without a break in service, shall retain the annual leave hours previously earned. If this change results in the employee having a maximum accumulation in excess of 45 workdays as of the effective date of the change, the employee shall not forfeit the excess. The employee shall retain this excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

19-709.03 USING AND SCHEDULING ANNUAL LEAVE

- A. Leave taken under this Section may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.
- B. Scheduling Leave
 1. To the degree possible, an employee's request for a specific period of annual leave shall be approved. Agencies may consider workloads and similar factors when reviewing the requests.
 2. Agency approval is required for the specific periods the employee shall be on annual leave, to include beginning and ending dates and computation of total hours.
- C. Maximum Days Used Per Year

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1. The maximum number of earned days of annual leave that may be used in any one calendar year shall not exceed 30 workdays.
2. Exception
 - a. For Family and Medical Leave Act or other disability related qualifying reasons, an agency may allow an employee who has used all eligible sick leave and 30 days of annual leave to use any remaining annual leave for:
 - (1) Emergencies or serious health conditions of the employee;
 - (2) Emergencies or serious health conditions of the employee's immediate family. (Immediate family is defined in Section 19-710.04 B. 6.)
 - b. For emergency or extreme hardship conditions as referenced in South Carolina Code of Laws § 8-11-670, the agency head or designee may allow an employee, who has used all accumulated sick leave and thirty days of annual leave any remaining annual leave which he has accumulated.
 - c. An employee may request review by the State Human Resources Director the denial of the use of annual leave as provided in this Section.

D. Increments for Use of Annual Leave

Use of annual leave shall be calculated at either the actual time or in quarter hour increments.

E. Holiday During Leave

When a holiday is observed by the agency while an employee is using annual leave, the day shall be considered a holiday, not a day of annual leave for the employee.

19-709.04 TRANSFER FROM ONE STATE AGENCY TO ANOTHER

- A. An employee who transfers without a break in service from one agency to another shall transfer earned annual leave.
- B. When a full-time employee transfers to an agency that has a different workday, his annual leave at the transferring agency shall be converted to equivalent days of annual leave at the receiving agency.
- C. When an employee transfers from a position in which he earns both sick and annual leave to a teaching position of academic rank at a State supported institution of higher learning, the employee shall be paid for earned annual leave according to Section 19-709.05.
- D. When the employee with a maximum carryover in excess of 45 workdays transfers from

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one agency to another, the employee shall retain the higher maximum carryover at the receiving agency. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, the employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

19-709.05 PAYMENT UPON SEPARATION FROM EMPLOYMENT

Upon separation from State employment, a lump sum payment will be made for unused annual leave, not to exceed 45 days, unless a higher maximum is authorized under Section 19-709.02 C., and without deducting any earned leave taken during the calendar year in which the employee separates. If the employee has not experienced a break in service, the agency shall not pay out any unused annual leave. However, an employee who transfers or is reassigned to a teaching position or position of academic rank at an institution of higher learning, as referenced in § 8-11-680 of the S.C. Code of Laws, should be paid out for any unused annual leave. Upon the death of an employee while in active service, the estate of the deceased employee shall be entitled to the lump sum payment not to exceed 45 days except as included in South Carolina Code of Laws § 8-11-610.

Exception - Refer to Section 19-719.01 B. 2. (Exceptions).

19-709.06 RECORDS

- A. The agency shall maintain all annual leave records for each employee eligible for annual leave. Such records must include at least the following:
 - 1. The annual leave accrual rate for each employee;
 - 2. The number of annual leave hours earned and used during the current calendar year;
 - 3. The number of annual leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized;
 - 4. The number of hours in the employee's workweek and workday; and
 - 5. The number of hours paid out upon separation.
- B. Annual leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by the individual leave requests.

19-710 SICK LEAVE

SCOPE AND PURPOSE

This Regulation governs the sick leave policies for employees in full-time equivalent (FTE) positions.

19-710.01 ELIGIBILITY

Sick leave shall be earned by and granted to:

- A. Full-time employees in FTE positions, and
- B. Part-time employees in FTE positions who are:
 - 1. Scheduled to work at least one-half the workweek of the agency on a 12 month basis, or
 - 2. Scheduled to work the equivalent of one-half of the workweek during the full school or academic year of nine months or more.

19-710.02 SICK LEAVE EARNINGS

A. Computation

- 1. Employees who are in pay status for at least one-half or more of the workdays of the month shall earn sick leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no sick leave.
- 2. Employees shall earn sick leave while on sick leave, annual leave, or other authorized leave with pay. Employees shall not earn sick leave while on leave without pay.
- 3. Employees' sick leave earnings are computed based on the number of hours in the employee's workday.

B. Rate of Earnings

- 1. Five-Day Workweek Schedule of 37.5 or 40 Hours Per Week

All employees in FTE positions shall earn sick leave beginning with the date of employment at the rate of 1¼ workdays per month of service or 15 days per year. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reported to work).

- 2. Schedules Other Than a Five-Day Workweek of 37.5 or 40 Hours Per Week

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To calculate the sick leave earnings for employees working schedules other than a five-day workweek of 37.5 or 40 hours per week (including part-time, variable, and nonstandard work schedules), the agency must determine what a workday is for each such employee. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reported to work). Examples of such schedules could include:

- a. Law enforcement employees who are regularly scheduled to work 43 hours per week. Forty-three hours divided by five equals a workday of 8.6 hours;
- b. Fire protection employees who are regularly scheduled to work 53 hours per week. Fifty-three hours divided by five equals a workday of 10.6 hours;
- c. Part-time employees who are regularly scheduled to work 20 hours per week. Twenty hours divided by five equals a workday of four hours; or
- d. Full-time employees who are regularly scheduled to work 39 hours per week. Thirty-nine hours divided by five equals a workday of 7.8 hours.

C. Maximum Accrual and Carryover

Full-time and part-time employees in FTE positions shall be permitted to earn up to 195 workdays. Full-time and part-time employees in FTE positions shall carryover from one calendar year to the next any unused earned sick leave up to a total maximum carryover of 180 workdays.

Exceptions

1. Any employee, who prior to January 1, 1969, earned and carried over unused sick leave in excess of 180 workdays pursuant to the agency's policy existing at the time, shall not forfeit the excess, but shall retain such excess leave which shall become the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of sick leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover; or
2. An employee who changes from being full-time to part-time or from part-time to full-time, without a break in service, shall retain the sick leave hours previously earned. If this change results in the employee having a maximum accumulation in excess of 180 workdays, as of the effective date of the change, the employee shall not forfeit the excess. The employee shall retain this excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 180 workdays, shall become the employee's maximum carryover into future years. If

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the employee further reduces the amount of such leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover. During the calendar year, an employee may earn sick leave in excess of 180 workdays; however, an employee may only carry over 180 days into the next year.

19-710.03 ADDITIONAL SICK LEAVE MAY BE GRANTED

- A. An agency may advance up to 15 workdays of additional sick leave to an employee in extenuating circumstances.
- B. The agency may advance this leave only upon documentation from a health care provider that the employee is expected to return to work within that period of time.
- C. Upon return to work, the employee will have all earned sick leave applied to the leave deficit at the rate of 1¼ days per month (or if part-time, the monthly earning rate) until the deficit has been eliminated.
- D. If an employee separates from employment before satisfying the leave deficit and returns to state employment, the leave deficit will need to be satisfied upon reemployment.

19-710.04 USING AND SCHEDULING SICK LEAVE

- A. Leave taken under this Section may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.
- B. Reasons an employee shall be allowed to use sick leave are as follows:
 - 1. Personal illness or injury that incapacitates the employee to perform duties of the position;
 - 2. Exposure to a contagious disease such that presence on duty could endanger the health of fellow employees;
 - 3. Appointment for medical or dental examination or treatment when such appointment cannot reasonably be scheduled during nonwork hours;
[Note: if possible, examination appointments must be approved in advance by the agency designee.]
 - 4. Sickness during pregnancy or other temporary disabilities;
[Note: If possible, the date on which sick leave for disability is to begin shall be at the request of the employee based on the determination and advice of a health care practitioner.]
 - 5. Treatment for alcoholism;
[Note: In accordance with § 8-11-110 of the South Carolina Code of Laws which recognizes alcoholism as a treatable illness, sick leave will be granted for the purpose

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of participating in public and private treatment and rehabilitation programs which have been approved by the South Carolina Department of Mental Health.]

6. Caring for ill members of immediate family;

[Note: Employees earning sick leave as provided in Section 19-710 may not use more than ten days of sick leave annually to care for ill members of their immediate families. For purposes of this section, the employee's "immediate family" means the employee's spouse and children and the following relations to the employee or the spouse of the employee: mother, father, brother, sister, grandparent, legal guardian, and grandchildren.]

7. Caring for an adoptive child;

[Note: An adoptive parent who is employed by this State, its departments, agencies, or institutions may use up to six weeks of his earned sick leave to take time off for purposes of caring for the child after placement. The agency shall not penalize an employee for requesting or obtaining time off according to this Section. The leave authorized by this Section may be requested by the employee only if the employee is the person who is primarily responsible for furnishing the care and nurture of the child.]

C. Verification

The use of sick leave shall be subject to verification. The agency designee may, before approving the use of sick leave, require the certificate of a health care practitioner verifying the need for sick leave and giving the inclusive dates.

D. Increments for Use of Sick Leave

Use of sick leave shall be calculated at either the actual time or in quarter hour increments.

E. Use of Sick Leave Before Going on Leave Without Pay

In qualifying sick leave situations, the employee shall use all sick leave before going on leave without pay unless the agency head or his designee grants an exception at the employee's request.

F. Holiday During Sick Leave

When a holiday is observed by the agency while an employee uses sick leave, the day shall be considered a holiday, not a day of sick leave for the employee.

19-710.05 TRANSFER

A. Between State Agencies

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An employee who transfers without a break in service from one State agency to another shall transfer his earned sick leave. Any transferred sick leave shall be adjusted to the scheduled workweek of the receiving agency. In the case of an employee transferring from an agency under whose system the employee has, prior to January 1, 1969, a maximum accumulation in excess of that currently authorized by the receiving agency, the total sick leave balance shall be transferred. If the employee subsequently reduces the amount of sick leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover.

B. Between A State Agency and School District

An employee of a State agency transferring to a school district of the State or a school district employee transferring to a State agency is permitted to transfer to and retain at his new employer all sick leave he earned at his former employer regardless of his employment status at the new employer.

19-710.06 SEPARATION FROM EMPLOYMENT

Upon separation from employment, an employee shall forfeit all earned sick leave.

- A. Retirement - An employee who is a Class Two member of the South Carolina Retirement System or the Police Officer Retirement System shall receive service credit for no more than 90 days of his unused sick leave at no cost to the employee. The leave must be credited at a rate where 20 days of unused sick leave equals one month of service. This additional service credit may not be used to qualify for retirement.
- B. Reduction in Force Rights - An employee who is reinstated within one year of the date of separation shall have his sick leave restored. (*Refer to Section 19-719.04 B. 4. d.*)
- C. Up to Six Month Exception to Break in Service - An employee who has received prior approval for an extension to the 15-day break in service shall have his sick leave restored if transferred or appointed to another FTE position within the approved time period. (*Refer to Section 19-719.01 B. 2. (Exception).*)

19-710.07 RECORDS

- A. The agency shall maintain all sick leave records for each employee eligible for sick leave. Such records must include at least the following:
 - 1. The number of sick leave hours earned and used during the current calendar year;
 - 2. The number of sick leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized; and
 - 3. The number of hours in the employee's workweek and workday.

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- B. Sick leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave requests.

19-711 LEAVE TRANSFER PROGRAM

SCOPE AND PURPOSE

This Regulation governs the manner in which employees may voluntarily donate sick or annual leave into a leave transfer pool for use by other employees, who have been approved as leave recipients under personal emergency circumstances.

19-711.01 AGENCY RESPONSIBILITY

- A. Each agency shall establish two separate leave transfer pool accounts, a sick leave transfer pool and an annual leave transfer pool.
- B. Records and Forms

Each agency shall maintain the following records:

- 1. Donation Request Form - The Donation Request Form shall include:
 - a. The employee's name;
 - b. The employing agency;
 - c. The employee's State title;
 - d. The employee's hourly rate of pay;
 - e. The number of days/hours of the leave donor's earned sick or annual leave;
 - f. The number of days/hours of sick or annual leave the employee wishes to donate to the appropriate leave transfer pool;
 - g. The date of the donation; and
 - h. The leave donor's signature.
- 2. Recipient Request Form - The Recipient Request Form shall include:
 - a. The employee's name;
 - b. The employing agency;
 - c. The employee's State title;
 - d. The employee's hourly rate of pay; and

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- e. A brief description of the nature, severity, and anticipated duration of the medical, family, or other hardship situation affecting the employee.
3. Leave Restoration Form - The Leave Restoration Form shall include:
 - a. The name of the leave recipient;
 - b. The type of leave transferred (sick or annual);
 - c. The amount of transferred leave used;
 - d. The date the leave recipient's personal emergency or employment terminates; and
 - e. The amount of transferred leave (sick or annual) being restored to the respective pool.

19-711.02 ANNUAL REPORTING

Each agency having any donation or approved requests for leave transfer in a calendar year shall submit the following information to the Division of State Human Resources (DSHR):

A. Sick Leave - Total hours and cost of:

1. Sick leave donated;
2. Sick leave used by recipient(s); and
3. Sick leave restored, if any.

B. Annual Leave - Total hours and cost of:

1. Annual leave donated;
2. Annual leave used by recipient(s); and
3. Annual leave restored, if any.

C. Any additional information requested by DSHR needed to evaluate the desirability, feasibility, and cost of the leave transfer program.

19-711.03 ELIGIBILITY TO DONATE

- A. An employee donating sick or annual leave to either the sick or annual leave transfer pool must do so prior to the end of the calendar year.
- B. An employee may donate no more than one-half of the sick or annual leave he earns

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within a calendar year to the appropriate pool leave account for that calendar year.

- C. An employee's leave, once transferred to a pool account, must not be restored or returned to the leave donor.
- D. Sick Leave - An employee with more than 15 days in his sick leave account may transfer sick leave to the agency's sick leave pool if he retains a minimum of 15 days in his own sick leave account. An employee with less than 15 days in his sick leave account may not transfer any sick leave to the agency's sick leave pool.
- E. Annual Leave - An employee may voluntarily request by completing the employing agency's Donation Request Form, that a specified number of hours of his earned annual leave be transferred from his annual leave account to his employing agency's annual leave transfer pool.

19-711.04 REQUEST FOR LEAVE

An employee with a personal emergency may request sick or annual leave from the appropriate pool account by completing the employing agency's Recipient Request Form. While there is no limit to the number of separate requests that an employee may submit to the employing agency, each separate request shall be limited to no more than 30 workdays.

19-711.05 LEAVE APPROVAL

Under guidelines established by the Department of Administration, the agency head of the employing agency may, upon receiving a completed request, review all necessary information and approve recipients from within the agency to participate in the leave transfer program. Unless the personal emergency involves a medical condition affecting the leave recipients, the employing agency may consider the likely impact on morale and efficiency within the agency in approving a leave recipient to use transferred leave.

19-711.06 NO ADMINISTRATIVE OR JUDICIAL APPEAL

The decisions of the agency head of the employing agency are final, and there is no administrative or judicial appeal of the decisions.

19-711.07 USE OF SICK OR ANNUAL LEAVE

- A. Leave taken under this Section may qualify for the Family Medical Leave Act (FMLA) and, if so, will run concurrently.
- B. Under guidelines established by the Department of Administration, the employing agency may transfer all or any portion of the sick leave in the pool account to the sick leave account of the leave recipient, and all or any portion of the annual leave in the pool account to the annual leave account of the leave recipient.

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- C. Upon approval of a request, an employee may use sick or annual leave from the appropriate pool account in the same manner and for the same purposes as if the employee had earned the leave in the manner provided by law.
- D. Sick or annual leave earned by the leave recipient must be used before using any leave from a leave transfer pool.
- E. Sick or annual leave transferred under this program may be substituted retroactively for periods of leave without pay or used to liquidate indebtedness for advanced sick leave.

19-711.08 WHEN PERSONAL EMERGENCY TERMINATES

- A. The personal emergency affecting a leave recipient terminates when either the employing agency determines that the personal emergency no longer exists or either the leave recipient separates from employment.
- B. The employing agency shall monitor continuously the status of the personal emergency affecting the leave recipient and establish procedures to ensure that the leave recipient is not permitted to receive or use transferred sick or annual leave from a pool account after the personal emergency terminates.
- C. When the personal emergency terminates, the employing agency may not grant further requests for transfer of leave to the leave recipient's leave account. When the personal emergency affecting a leave recipient terminates, any transferred sick or annual leave remaining must be restored to the appropriate pool account by completing a Leave Restoration Form.

19-711.09 SEPARATION FROM EMPLOYMENT

Transferred sick or annual leave from a pool account remaining when the leave recipient separates from employment must be restored to the appropriate pool account by the completion of a Leave Restoration Form. Upon separation from employment, transferred leave from a pool account must not be transferred to another employee, included in a lump sum payment for earned leave, or included in the leave recipient's total service for retirement computation purposes.

19-712 OTHER LEAVE PROGRAMS

SCOPE AND PURPOSE

This Regulation governs the leave programs, other than annual and sick leave and holidays.

19-712.01 OTHER LEAVE TYPES

Leave taken under this Section may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.

A. Administrative Leave

State employees in full-time equivalent (FTE) positions who are physically attacked while in the performance of official duties and suffer bodily harm as a result of the attack must be placed on administrative leave with pay by their employers rather than sick leave. The period of administrative leave for each incident may not exceed 180 calendar days. Denial of the use of administrative leave by the agency will be grounds for review by the Division of State Human Resources (DSHR) upon request of the employee. Administrative review by DSHR will be final.

B. Adoption Leave – (*Refer to Section 19-710.04 B. 7.*)

C. American Red Cross Certified Disaster Service Leave

An employee who is a certified disaster service volunteer for the American Red Cross may use up to 10 days of paid leave in a calendar year to participate in specialized disaster relief services with the approval of the agency designee.

D. Blood Drive and Donation Leave

1. Agencies may periodically arrange volunteer blood drives for their employees. The blood drives may be held at the times and places as may be determined by the agency head. The agency's employees are permitted to participate in the blood drive during their work hours without using sick and annual leave.
2. An employee desiring to donate blood at a time, other than an agency arranged volunteer blood drive, must be excused from work by his agency during the employee's regular work hours for the purpose of making the donation without prejudice to the employee and no leave or makeup time may be required. Any employee desiring to donate blood as provided in § 8-11-175 of the South Carolina Code of Laws shall notify his agency of the scheduled donation and the amount of time needed for the donation as far in advance as may be practicable. The agency may deny the employee's request for time to donate if the absence of the employee would create an extraordinary burden on the agency. In considering the employee's request, the agency shall take into consideration such factors as the necessity and type

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of blood donation, and any other factor the agency considers appropriate. The agency may, as condition of approving the request, require the employee to provide documentation of the donation.

E. Bone Marrow Donor Leave

An employee who works an average of 20 hours or more a week and who seeks to undergo a medical procedure to donate bone marrow may be granted bone marrow donor leave with pay. The total amount of paid leave may not exceed 40 work hours unless a longer length of time is approved by the agency head. Such leave may require verification by a health care practitioner of the purpose and length of each request. If a medical determination finds that the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee before that medical determination is not forfeited.

F. Court Leave

1. Jury Duty (With Pay)

- a. An employee, who is summoned as a member of a jury panel, shall be granted court leave with pay. Any jury fees and travel payment shall be retained by the employee. This court leave with pay shall not apply to agencies whose employees are exempt from jury duty by law.
- b. An employee, who is excused from jury duty and was not required to be at court the number of hours equal to the employee's workday, is required to return to the job according to arrangements between the employee and the agency designee. The employee must be on authorized leave for any time the employee is excused from jury duty and does not return to work.
- c. An employee who is summoned to jury duty will be required to work on any given day only the number of hours that equal the employee's work schedule, minus the hours required to be at court.

2. Subpoenaed As a Witness (With Pay)

An employee, who is subpoenaed as a witness and who will not receive any personal gain from the outcome of the litigation, shall be entitled to court leave with pay for those hours required for the subpoena and may retain any witness fee and travel expenses.

3. An employee, who is victim of or witness to a crime and must attend court in relation to the case or in order to obtain an Order of Protection or restraining order, shall receive court leave with pay.

4. Exceptions

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- a. An employee engaged in personal litigation is not eligible for court leave with pay, but may be granted annual leave or leave without pay with appropriate authorization.
- b. When an employee is subpoenaed to represent an agency as a witness or defendant, his appearance is considered a part of the employee's job assignment. The employee shall be reimbursed for any meals, lodging, and travel expenses that may be incurred according to the rules and regulations as provided by the Office of the Comptroller General.
- c. When an employee attends, in an official capacity, a mediation or mediation-arbitration conference, his attendance is considered a part of the employee's job assignment.
- d. When an employee appears as a witness or in any other official capacity in a hearing before the State Employee Grievance Committee, his appearance is considered a part of the employee's job assignment.

G. Death in Immediate Family Leave

1. An employee, upon request, shall be granted up to three consecutive workdays of leave with pay on the death of any member of the employee's immediate family. Immediate family is defined as the spouse, great-grandparents, grandparents, parents, legal guardians, brothers, spouse of brothers, sisters, spouse of sisters, children, spouse of children, grandchildren, great-grandchildren of either the employee or the spouse.
2. An employee requesting leave for a death in the immediate family shall submit a statement to the appropriate authority stating the name of the deceased and the relationship to the deceased.

H. Educational Leave

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours and the agency cannot feasibly adjust the work schedule of the employee, the employee may be allowed to take annual leave or may be granted leave without pay in order to attend classes.

I. Extended Disability Leave

Under the Americans with Disabilities Act (ADA), the Americans with Disabilities Act Amendments Act (ADAAA), and other applicable law, certain extended impairments may be protected as disabilities and may require reasonable accommodation. In certain

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cases, the use of leave may be considered a reasonable accommodation. Determinations regarding reasonable accommodations should be made on a case-by-case basis as dictated by the circumstances.

The agency shall require, prior to approval of leave as a reasonable accommodation, certification by the health care practitioner to a reasonable degree of medical certainty to include at a minimum: (a) the date on which the disability commenced; (b) the probable duration of the condition and a probable return date; and (c) appropriate medical facts within the knowledge of the health care practitioner regarding the condition and any work limitations. Dates set forth in the health care practitioner's certificate may be amended. The agency may require additional documentation from the health care practitioner issuing the certificate, or may secure additional medical opinions from other health care practitioners. If an employee's health care practitioner or the employee identifies a disability as long-term, the agency may suggest to the employee to contact the Public Employee Benefit Authority (PEBA) as soon as possible to evaluate eligibility for any appropriate benefits, such as insurance or retirement, if the employee believes it would be appropriate.

J. Family and Medical Leave Guidelines

For more detailed information, consult the Family and Medical Leave Act (FMLA) and relevant federal regulations. State government is considered a single employer for the purpose of determining FMLA leave.

1. Eligibility and Reasons for FMLA Leave

- a. Family Medical Leave Act leave shall be granted to any employee who has worked for the State at least 12 months, and who has worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours. The required total of 12 months of employment need not be consecutive. An agency can go back 7 years prior to the date of the need for leave to determine if the employee worked a total of 12 months with state government. An agency has the ability to go beyond 7 years if an employee left state employment due to National Guard or Reserve Military obligations or a written agreement reflecting an employer's intention to rehire after a break.

In order to determine if an exempt employee meets the 1,250 hours of service, work records may be kept.

- b. An eligible employee shall be granted up to a total of 12 weeks of FMLA leave, in each calendar year, for any of the following reasons:
 - (1) For the birth of a son or daughter and to care for that child;

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- (2) For placement of a son or daughter for adoption or foster care with the employee;
 - (3) For caring of the employee's spouse, son, daughter, or parent with a serious health condition; and
 - (4) For a serious health condition that makes the employee unable to perform the functions of the employee's job.
 - (5) For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or called to active duty status as a member for the National Guard or Reserves in support of a contingency operation. Qualifying exigencies can include: 1) short notice deployment; 2) military events and related activities; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) rest and recuperation; 7) post- deployment activities; and 8) additional activities not encompassed in other categories but agreed by the agency and the employee.
- c. Under the military caregiver leave provisions, an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness may be able to take up to a total of 26 workweeks in a single 12-month period to care for the service member.

Note: Reasons (1) and (2) for leave expires 12 months after the date of the birth or placement.

2. Scheduling FMLA Leave

An eligible employee requesting FMLA leave must give 30 days advance notice to the employing agency of the need to take FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practical. The use of FMLA leave shall be subject to verification. The agency may require documentation or certification from a health care provider supporting the need for FMLA leave for a serious health condition. Agencies may also require documentation for certification of serious health condition of a spouse, son, or daughter, a qualifying exigency or to confirm familial relationships.

3. Use of FMLA Leave

The agency is responsible for declaring leave as FMLA leave based on information provided by the employee.

- a. When the agency designates leave as FMLA leave, it must notify the employee. No leave may be designated as FMLA leave after the leave has ended, except as provided for under the FMLA.

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- b. Use of FMLA leave shall be calculated by either the actual time or in quarter hour increments.
 - c. The agency should declare any leave taken that qualifies as FMLA leave. The FMLA leave should run concurrently with any other leave, and the leave should be charged against the appropriate leave balances.
4. Use of Paid and Unpaid Leave

Generally, FMLA leave is unpaid; however,

- a. An eligible employee will be required to substitute his accrued sick leave for unpaid FMLA leave when the FMLA leave request qualifies for sick leave usage, or
 - b. An eligible employee may elect to substitute accrued annual leave for unpaid FMLA leave.
5. FMLA Leave Record

A leave record shall be maintained by the employing agency for each employee subject to the provisions of the FMLA. Such record shall:

- a. Reflect the maximum FMLA leave allowance (12 weeks in a calendar year) and charges in terms of hours.
 - b. Indicate the number of FMLA leave hours used in the current calendar year.
 - c. Indicate the number of hours in the employee's established workweek.
6. Transfer of FMLA Leave

For an eligible employee who transfers from one agency to another, the transferring agency is responsible for transferring the employee's FMLA leave records in that calendar year to the receiving agency.

K. Hazardous Weather and Emergency Leave

- 1. Upon issuing a Declaration of Emergency, the Governor has the authority to excuse all employees of State government from reporting to work during extreme weather or other emergency conditions. "Emergency conditions" means circumstances that would expose employees to harmful or unsafe conditions as determined by the Governor's Office. Unless such a Declaration of Emergency has been issued, all State government employees are expected to report to work.

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Exception - Nothing contained in this Section precludes the necessary immediate evacuation of a facility by an individual in an appropriate supervisory capacity in the interest of personal safety.

2. The Declaration may be applicable to all employees in the entire State, or only to those employees who live or work in one geographical region of the State, or a combination of geographical regions.
3. During a Declaration of Emergency, all essential and direct care services will be maintained. Each agency shall identify and notify essential employees by position, classification, or internal title. All other employees will not be expected to report to work.
4. Notification of Declaration of Emergency

Upon the communication of the Declaration of Emergency from the Governor's Office to the South Carolina Emergency Management Division, the South Carolina Emergency Management Division will communicate the Declaration of Emergency to each agency.

5. Compensation During Declaration of Emergency

Notwithstanding any other provisions of law, when the Governor declares a state of emergency for the State or any portion of the State, he can provide State employees with leave with pay for absences from work due to the state of emergency for hazardous weather of up to five days for each declaration of a state of emergency. In the event that the Governor does not provide State employees with leave with pay, an employee who does not report to work or who reports late to work shall use annual leave or compensatory time to make up hours scheduled but not worked, take leave without pay, or be allowed to make up the hours at a time to be scheduled by the agency. The employee must be given the option of making up the hours if the employee so desires.

- L. Military Leave (Cross reference FMLA. Refer to Section 19-712.01 J. on qualifying exigencies.)
 1. Short Term Military Training

All officers and employees of this State or a political subdivision of this State, who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating, for one or more periods not exceeding an aggregate of 15 regularly scheduled average workdays in any one year during which they may be engaged in training or any other duties ordered by the Governor,

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the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and State holidays may not be included in the 15-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. In the event any such person is called upon to serve during an emergency, he is entitled to such leave of absence for a period not exceeding 30 additional days. Any one year means either a calendar year or, in the case of members required to perform active duty for training or other duties within or on a fiscal year basis, the fiscal year of the National Guard or reserve component issuing the orders.

A state employee in a full time position who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to receive up to thirty additional work days of military leave in any one year.

2. Long Term Military Leave of Absence

Every employee of the State or any political subdivision thereof who, on or after June 25, 1950, has been, or shall be commissioned, enlisted, or selected for service in the Armed Forces of the United States (excluding short term training) shall, so long as the requirements and regulations of the Armed Forces shall prevent his return to his civil employment for a period of 90 days thereafter, but in no event for a period longer than five years from the date of entry into the Armed Forces of the United States, be entitled to leave of absence from his duties as an employee of the State or any political subdivision thereof, without loss of seniority or efficiency or register ratings. The word "employee" as used herein shall not be construed to mean an officer or official elected or appointed to a term pursuant to a statute or the Constitution of this State.

M. Sabbatical Leave

When provided in statute, an institution of higher learning may establish a policy for a leave of absence for a sabbatical for academic personnel.

N. State Employee Grievances and Appeals Attendance

Refer to Section 19-712.01 F. 3. c. and d.

O. Voting Leave

An employee who lives at such distance from the assigned work location as to preclude voting outside of working hours may be authorized a maximum of two hours of leave with pay for this purpose. To work at the polls during elections, an employee must be on authorized leave.

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P. Workers' Compensation Leave

1. If there is an accidental injury arising out of and in the course of employment with the State, which is covered under Workers' Compensation, an employee who is not eligible for or who has exhausted his paid administrative leave, shall make an election to use either earned leave time (sick or annual or both) or Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws.
2. The employee shall make an election under one of the following options:
 - a. To use sick leave, annual leave, or both. When earned leave is exhausted before the employee can return to work, the employee shall be entitled to Workers' Compensation benefits at the time leave is exhausted;
 - b. To use Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws, as amended; or
 - c. To use sick leave, annual leave, or both on a prorated basis in conjunction with Workers' Compensation benefits according to the formula approved by the Department of Administration.
3. Before the election is made, the effect of each available option on the employee's future leave earnings must be explained to the employee by the employing agency. The election must be in writing and signed by the employee and the person who explains the options. The election of the employee is irrevocable as to each individual incident.
4. Regardless of which option an employee elects, he would continue to be eligible for payment of medical costs provided by the State Accident Fund.

Q. Organ Donor Leave

All officers and employees of this State who wish to be an organ donor and who accrue annual or sick leave as part of their employment are entitled to leaves of absence from their respective duties without loss of pay, time, leave, or efficiency rating for one or more periods not exceeding an aggregate of 30 regularly scheduled workdays in any one calendar year during which they may engage in the donation of their organs. Saturdays, Sundays, and State holidays may not be included in the 30-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. The officer or employee must show documentation from the attending physician of the proposed organ donation before leave is approved that confirms that the employee is the donor.

R. Leave of Absence

To grant any leave of absence with or without pay, the agency must approve the leave of

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absence. An employee who is granted leave of absence with or without pay shall be:

1. An employee of the State while on such leave; and
2. Returned to the same position, or one in a comparable pay band for which the employee is qualified.

Any leave of absence must be approved in advance except in case of medical or personal emergencies. These situations must be justified to the agency head or his designee for approval.

19-712.02 OTHER LEAVE RECORDS

- A. The agency shall maintain all leave records for each employee eligible for such leave. Such records must include the number of leave hours used during the current calendar year.
- B. Leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave requests.

19-713 DUAL EMPLOYMENT

SCOPE AND PURPOSE

This Regulation governs how employees in full-time equivalent (FTE) positions may accept additional temporary, part-time employment with the same or another agency.

19-713.01 STATEMENTS OF POLICY

A. General Provisions

1. In accordance with this Regulation, agencies may develop internal dual employment policies.
2. Dual employment shall be limited in duration to the specific time frame approved which cannot exceed 12 months.
3. The practice of dual employment should not be used to provide higher continuing salaries than those approved by the Department of Administration. An employee engaged in dual employment shall satisfy the requirements of the established hours of work for the primary agency.
4. No agency head may be dually employed by another agency or institution of higher education without prior approval by the Agency Head Salary Commission and the Department of Administration.

B. Approval of Dual Employment

1. The agency heads or their designees of the primary and secondary agencies, or the agency head or his designee when the dual employment is in the same agency, are responsible for approving dual employment requests prior to the beginning of the dual employment relationship.
2. Because the secondary agency is responsible for coordinating dual employment arrangements, the secondary agency will coordinate the approval and any modifications of the dual employment request with the primary agency.
3. The primary agency should process dual employment requests in a timely manner.

C. Scheduling Dual Employment

1. Dual Employment Between Two Agencies

Ordinarily, an employee's work schedule with the primary agency should not be altered or revised to provide time to perform dual employment duties for the secondary agency. However, an employee may be permitted to use annual leave or

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leave without pay to provide services during working hours for a secondary agency and may receive compensation from the secondary agency for services performed during the period of leave.

2. Dual Employment Within an Agency

An employee who performs services during other than normally scheduled hours of work for his primary agency may be considered to be performing dual employment and be paid additional compensation, if such services constitute independent, additional job duties from those of the employee's primary duties within the agency. No employee shall receive any additional compensation from the primary agency while in a leave with pay status to include all designated State holidays, annual leave, and compensatory time. The agency head should only approve dual employment within the same agency when extraordinary circumstances exist based on the agency's business needs.

D. Compensation for Dual Employment

1. No compensation for dual employment shall be paid to an employee prior to the approval of a dual employment agreement.
2. Both the primary agency and the secondary agency must comply with the provisions of the Fair Labor Standards Act (FLSA).
3. Compensation for dual employment will be determined by the secondary agency; however, the maximum compensation that an employee will be authorized to receive for dual employment in a fiscal year shall not exceed 30% of the employee's annualized salary with the employing agency for that fiscal year. The primary agency is responsible for ensuring that dual employment payments made to its employees within one fiscal year do not exceed the 30% limitation. The Division of State Human Resources (DSHR) is authorized to approve exceptions to the 30% limitation based on written justification submitted by the agency.
4. Payment of dual employment compensation shall be made in a timely manner. The secondary agency must make payment of funds approved for and earned under dual employment within 45 days of the beginning of the employment.
5. No employee shall be eligible for any additional fringe benefits as a result of dual employment, including but not limited to annual leave, sick leave, military leave, State insurance, and holidays. However, dual employment compensation shall be subject to such tax and retirement deductions as required.

E. Dual Employment Recordkeeping

1. All dual employment requests must be in writing and contain the following information:

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- a. Name of secondary agency;
 - b. Description of services to be performed, beginning and ending dates of the dual employment, hours of work, and the FLSA status of the work to be performed for the secondary agency;
 - c. Name of primary agency;
 - d. Name of employee, State title of the employee's position, the FLSA status of the employee's position at the primary agency, present annualized salary of employee, and scheduled hours of work at the primary agency;
 - e. Amount and terms of compensation, if applicable; and
 - f. Signature of the agency heads or their designees, of both the secondary and the primary agencies, authorizing the dual employment as well as the signature of the employee.
2. For each dual employment arrangement, both the primary and secondary agency must maintain the written dual employment request. When the dual employment is within the same agency, that agency must maintain a written dual employment request for each dual employment arrangement.

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19-714 GOVERNMENT EMPLOYEES INTERCHANGE PROGRAM

SCOPE AND PURPOSE

This Regulation governs the authority for administering an interchange program for government employees to facilitate short term assignments between or among federal, state, or local governments.

19-714.01 STATEMENTS OF POLICY

- A. The Department of Administration has delegated to the State Human Resources Director the authority to administer an Interchange of Government Employees Program as provided in § 8-12-60 of the South Carolina Code of Laws.
- B. Agencies should refer to the Government Employees Interchange Program guidelines developed by the Division of State Human Resources (DSHR) for instructions on preparing an interchange agreement.

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19-715 EMPLOYEE PERFORMANCE EVALUATION SYSTEMS

SCOPE AND PURPOSE

This Regulation governs the establishment and administration of employee performance evaluation systems for employees.

19-715.01 STATEMENTS OF POLICY

- A. The Division of State Human Resources (DSHR) shall develop an EPMS model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's EPMS policy which includes a Substandard Performance process.
- B. Each agency shall develop an Employee Performance Management System that functions as an effective management tool within the agency, supports continuous communication between supervisors and employees, and provides a sound process for the evaluation of the performance and productivity of its employees.
- C. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch campuses, shall not be covered by these Regulations but shall be governed by § 8-17-380 of the South Carolina Code of Laws.
- D. An employee or an employee whose position is exempt from the State Employee Grievance Procedure Act is also exempt from the Employee Performance Management System. However, these employees may be given annual performance evaluations.
- E. The State Human Resources Director shall have the authority to make exceptions to these Regulations.

19-715.02 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES

- A. A performance review date is the first day which marks the beginning of a new review period. If an employee does not receive a performance evaluation prior to the performance review date, the employee shall receive a "meets performance requirements" rating by default.
- B. In Probationary Status (*Refer to Section 19-704.*)
 - 1. Upon initial employment or reemployment, the performance review date shall be established as:
 - a. Twelve months from the date of an initial employment or reemployment;
 - b. The academic year for instructional personnel; or

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- c. Not more than two full academic years duration for faculty at State technical colleges.
 2. The performance review date for a probationary employee who is promoted, demoted, reclassified, experiences an unclassified State title change, or is reassigned or transferred to a new class or unclassified State title shall be established as:
 - a. Twelve months from the date of the promotion, demotion, reclassification, or reassignment or transfer to a new class or unclassified State title change for non-instructional personnel;
 - b. The academic year duration from the date of the promotion, demotion, reclassification, or reassignment or transfer to a new class or unclassified State title for teachers; or
 - c. Not more than two full academic years duration from the date of the promotion, demotion, unclassified State title change, or reassignment or transfer to another unclassified State title for faculty at State technical colleges.
 3. Exception - At the discretion of the agency head or his designee, up to six months of continuous satisfactory service in the previous class or unclassified State title may be counted toward the probationary period in the new class or unclassified State title which would result in a reduction in the length of the employee's performance review period.

C. In Trial Status (*Refer to Section 19-704.*)

1. A covered employee who is promoted, demoted, reclassified, reassigned, or transferred to a position or experiences an unclassified State title change in which he has not held permanent status in the class or unclassified State title shall have the performance review date reestablished six months from the date of the action.
2. An employee who is in a trial status and has had the trial period extended shall have the performance review date advanced up to 90 calendar days for the time period such extension is in effect.
3. Exception - An employee who is promoted and, prior to attaining permanent status in the class with a higher State salary range, or unclassified State title having a higher State salary range or higher level job duties or responsibilities, is demoted to the same class or unclassified State title from which promoted, shall retain the original performance review date established in the class with a lower State salary range, or unclassified State title having a lower State salary range or lower level job duties or responsibilities.

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D. Covered Employees with Permanent Status in the Class or Unclassified State Title

If a covered employee with permanent status in the class or unclassified State title is promoted, demoted, reclassified; experiences an unclassified State title change; or is reassigned or transferred to a new class or unclassified State title in which the employee has previously completed a probationary or trial period, the employee retains permanent status in the class or unclassified State title and is not placed in a probationary or trial status. Instead, the employee's performance review date is reestablished six months from the date of the promotion, demotion, reclassification, reassignment, or transfer.

E. A covered employee's performance review date shall be changed for the following reasons:

1. If an employee is on approved leave with or without pay for more than 30 consecutive workdays, the employee's performance review date may be advanced up to 90 days.
2. An employee who receives a "Warning Notice of Substandard Performance," may have the performance review date advanced to coincide with the "Warning Notice of Substandard Performance" dates.
3. An employee's performance review date may be adjusted due to promotions, demotions, reclassifications, reassignments, transfers, or unclassified State title changes, as provided in Section 19-715.
4. An employee who transfers to a position in the same class in another agency or is reassigned to a position in the same class and agency within six months or less of his review date shall have the performance review date advanced six months from the date of the transfer or reassignment.
5. An employee's performance review date may be adjusted when an agency adopts a universal performance review date in its written EPMS policy.
6. An employee, who is promoted or reclassified upward and prior to attaining permanent status in the class with a higher State salary range or in the unclassified State title having a higher State salary range or higher level of job duties or responsibilities, and is demoted or reclassified downward to the same class or unclassified State title from which promoted or reclassified upward, shall retain the original performance review date established in the class with a lower State salary range or unclassified State title having a lower State salary range or lower level of job duties or responsibilities.

F. A covered employee's performance review date shall not be changed for the following reasons:

1. An employee who transfers to a position in the same class in another agency or is

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reassigned to a position in the same class and agency who is more than six months from his review date shall not have the performance review date advanced six months from the date of the transfer or reassignment.

2. When a class is reallocated, an employee in that class shall not have the performance review date reestablished.
3. An employee who receives an in-band increase or decrease within the current class shall not have the performance review date reestablished.

19-715.03 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES FOR EMPLOYEES IN THE EXECUTIVE COMPENSATION SYSTEM

A. For Employees Covered by the State Employee Grievance Procedure Act

Upon completion of a probationary or trial period, the performance review date of a covered employee in the Executive Compensation System shall be reestablished on July 1.

B. Employees Exempt From Coverage by the State Employee Grievance Procedure Act

Annual performance evaluations shall be completed by July 1 for employees in the Executive Compensation System who are exempt from coverage by the State Employee Grievance Procedure Act. Such employees do not serve a probationary period or a trial period.

- C. Exception – The performance review date for the above categories of employees shall be July 1, unless the agency adopts a universal performance review date in its written EPMS policy.

19-715.04 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES FOR AGENCY HEADS

Annual performance evaluations shall be completed by July 1 for agency heads.

19-716 STAFF DEVELOPMENT AND TRAINING

SCOPE AND PURPOSE

This Regulation governs staff development and training programs for agencies but does not affect sabbatical leave for academic personnel.

19-716.01 STATEMENTS OF POLICY

- A. An agency may sponsor training for employees to improve or secure those skills necessary for the efficient and effective operations of the agency and to ensure uniformity in the administration of staff development and training programs throughout the State service.
- B. The agency head or his designee shall be responsible for the administration of staff development and training within the agency.

19-716.02 EDUCATIONAL LEAVE

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours, and the agency cannot feasibly adjust the work schedule of an employee, an employee may be allowed to take annual leave or be granted leave without pay in order to attend classes.

19-716.03 REQUIRED COURSES

An agency may require an employee to take a specific course that will help improve the employee's performance in the present position or acquire skills necessary to perform additional job duties to meet agency needs. If required, the agency will then pay all costs of the course, including tuition, fees, books, and examinations. An agency shall not pay for courses required to attain nor to maintain a professional license unless related to the performance of the employee's job duties. Attendance at required courses may constitute work time.

19-716.04 TUITION ASSISTANCE

- A. Agencies may provide tuition assistance to employees based on the guidelines recommended by the Division of State Human Resources (DSHR) and approved by the Department of Administration.
- B. When staff development and training needs cannot be accomplished within the Tuition Assistance Guidelines, the agency may submit a proposal to the Department of Administration for approval.

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1. Approval of the proposal by the Department of Administration must precede the selection of employees for training. Each proposal shall include the following information:
 - a. Program justification based on agency needs;
 - b. Description of the courses;
 - c. All classes and the number of positions in each class in the requested program;
 - d. Fiscal year cost estimates for participation in the requested program; and
 - e. A service commitment and payback agreement.
2. Except as provided above, any other forms of educational assistance for employees or non-employees may not be given by agencies unless authorized by statute or by the Department of Administration.

19-717 DISCIPLINARY ACTIONS

SCOPE AND PURPOSE

This Regulation governs the administration of progressive discipline for employees in full-time equivalent (FTE) positions.

19-717.01 STATEMENTS OF POLICY

- A. The Division of State Human Resources (DSHR) shall develop a progressive discipline model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's progressive discipline policy.
- B. Each agency shall develop a progressive discipline policy and establish procedures that will ensure timely and equitable treatment of employees' behavioral deficiencies and breaches of conduct.
- C. Whenever possible, coaching and counseling should precede any disciplinary action.
- D. Each agency's progressive discipline policy should provide for the following types of disciplinary actions:
 - 1. Oral Reprimand
 - 2. Written Reprimand
 - 3. Suspension
 - 4. Termination

An agency may also use reassignments, reclassifications, unclassified State title changes, and demotions as types of disciplinary actions.

- E. All suspensions shall be without pay.

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19-718 STATE EMPLOYEE GRIEVANCES AND APPEALS

SCOPE AND PURPOSE

This Regulation sets forth the procedures for grievances and appeals under the State Employee Grievance Procedure Act (the Act), codified at § 8-17-310 through § 8-17-370 of the South Carolina Code of Laws, as amended.

19-718.01 STATEMENTS OF POLICY

- A. The Division of State Human Resources (DSHR) shall develop a grievance model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's grievance policy.
- B. Each agency shall develop a grievance policy and establish procedures that will ensure timely and equitable treatment for the review of employee grievances.
- C. All covered employees as defined in §8-17-320 (7) of the South Carolina Code of Laws, as amended, are eligible to initiate a grievance or an appeal as specified in the Act. The State Employee Grievance Procedure Act does not apply to non-covered employees.
- D. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch campuses, shall not be covered by these Regulations but shall be governed by § 8-17-380 of the South Carolina Code of Laws
- E. No employee shall be disciplined or otherwise prejudiced in employment for exercising rights or testifying under the Act.

19-718.02 INTERNAL AGENCY GRIEVANCE PROCEDURES

- A. Each notice of an employment action by an agency that may constitute a grievance under the Act should be in writing. A voluntary acceptance of such an action on the part of a covered employee should also be in writing. The notice must advise the covered employee of the action taken and, except in cases where the action is voluntary as evidenced by a signed statement by the covered employee, should advise of the covered employee's right to initiate a grievance.
- B. Each agency shall establish written internal agency grievance procedures. All provisions shall comply fully with the Act and, as provided for in the Act, be submitted to DSHR for approval.
- C. Each agency shall ensure that each covered employee is afforded access to a copy of the agency's internal agency grievance procedures.

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- D. Each agency shall maintain documentation pertaining to grievances filed by employees. Such information must be made available upon request by DSHR.
- E. Failure by the agency to issue a final decision within 45 calendar days is considered an adverse decision and allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than 55 calendar days from the initial date the grievance was filed within the agency.

19-718.03 COVERED EMPLOYEES AND THEIR REPRESENTATIVES

- A. “Covered employee” means a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a “meets” (or equivalent) or higher overall rating on the employee’s performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges of not more than two full academic years’ duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.
- B. Throughout the grievance and appeal process, each covered employee may be represented and advised by counsel or other representative or be self-represented as provided by § 8-17-330 of the South Carolina Code of Laws.
- C. The Act exempts certain employees from its provisions as noted in § 8-17-370 of the South Carolina Code of Laws.

19-718.04 GRIEVANCES

- A. Grievable adverse actions shall include:
 - 1. Terminations;
 - 2. Suspensions;
 - 3. Involuntary reassignments in excessive of thirty (30) miles from the prior work station;
 - 4. Demotions;
 - 5. Punitive reclassifications where the agency, in the case of a grievance, or the State Resources Director, in the case of an appeal, determines that there is a material issue of fact that the action was solely done to penalize the covered employee. However, reclassifications, reassignments, and transfers within the same state salary range are not considered to be grievable or appealable;
 - 6. Promotions, in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one

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- organizational level above the promoted employee's former level, however, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered grievable or appealable;
7. Salary decreases based on performance as the result of an Employee Performance Management System (EPMS) evaluation; and
 8. Reduction in Force but only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.
- B. A covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action in accordance with the agency's grievance policy.
- C. The following are some examples of employment actions that do not constitute a basis for a grievance or an appeal:
1. A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;
 2. A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification;
 3. A covered employee who is promoted, reclassified to a higher salary range, or moved to an unclassified position with a higher rate of pay and subsequently demoted prior to completing the trial period in the class with the higher salary range or higher rate of pay shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range or lower rate of pay than the position in which the employee was serving prior to promotion, reclassification, or movement to an unclassified position with a higher rate of pay;
 4. A covered employee who is promoted or moved to an unclassified position with a higher rate of pay and subsequently receives a reduction in pay prior to completing the trial period in the position with the higher salary range or higher rate of pay shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to the promotion or movement to a an unclassified position with a higher rate of pay;
 5. A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which

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justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.

19-718.05 APPEALS TO THE STATE HUMAN RESOURCES DIRECTOR

- A. If a covered employee is not satisfied with the agency's final decision concerning his grievance, he may appeal, after all administrative remedies to secure relief within the agency have been exhausted, to the State Human Resources Director who will determine whether to dismiss the appeal or remand or forward the appeal for further action.
- B. A covered employee who wishes to appeal the final decision of the agency to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within 55 calendar days after the employee filed the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of receipt of the agency's final decision or 55 calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal. The time periods for an appeal to the State Human Resources Director may not be waived.
- C. The Division of State Human Resources shall develop standard forms to be used in all appeal procedures.
- D. Upon receipt of an appeal from a covered employee, the State Human Resources Director shall:
 - 1. Acknowledge receipt of the appeal and require that the covered employee submit a standard appeal application form;
 - 2. Upon receipt of the standard appeal application form, notify and request that the agency furnish the State Human Resources Director a copy of all records, reports, and documentation of the earlier proceedings on the grievance within 15 calendar days following the request. Extensions may be granted in extenuating circumstances; and
 - 3. Determine whether the appeal is timely and complies with the jurisdictional requirements of the Act.
- E. If the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision. A notice of appeal seeking appellate review of the decision may be made by

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the covered employee to the Administrative Law Court as provided in Sections 1-23-380 and 1-23-600 (D) of the S.C. Code of Laws.

- F. If the State Human Resources Director determines that additional action by the agency is necessary and appropriate, he may remand the appeal to the agency.
- G. If the State Human Resources Director determines that the covered employee has pending related criminal charges against him, the appeal process may be held in abeyance pending the outcome of those charges at the request of the covered employee or the agency. If the appeal is held in abeyance, the covered employee or his representative must notify DSHR within 30 calendar days after the disposition of the charges has been determined in order to preserve the covered employee's right to further pursue his appeal. Failure to contact DSHR within those 30 calendar days will be deemed a waiver and abandonment of the appeal. Evidence of the dismissal, acquittal, or non-prosecution of the related criminal charges shall be inadmissible in the employee's appeal pursuant to applicable law.
- H. At the request of the covered employee or the agency, the State Human Resources Director may place an appeal in abeyance in extenuating circumstances.
- I. If the State Human Resources Director determines that the appeal is timely and complies with the requirements of the Act, he will forward the appeal either (1) to the mediator-arbitrator for mediation-arbitration or (2) after the mediation process has been completed, to the designated panel of the State Employee Grievance Committee [Committee] and Committee Attorney for a hearing, whichever is appropriate based on the type of adverse employment action.
- J. When an appeal is forwarded to a designated Committee panel, the State Human Resources Director will notify the covered employee or their representative and the agency with a statement as to the issues which have been presented by the parties for presentation before the Committee for decision.
- K. The official record on each appeal and all related correspondence and documents shall be maintained in a confidential file by DSHR.
- L. The State Human Resources Director will send the notices and correspondence pertaining to an appeal directly to the parties or their representatives.

19-718.06 MEDIATION PRIOR TO STATE EMPLOYEE GRIEVANCE COMMITTEE-HEARINGS

- A. "Mediation" means an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and nonadversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

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B. Once an appeal has been made to the State Human Resources Director and has been determined to meet the jurisdictional requirements for an appeal to be forwarded to the Committee, the State Human Resources Director shall appoint a mediator to the appeal. The following adverse employment actions will be forwarded to the mediator: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy.

C. The mediator:

1. Shall review the documents which have been submitted by each party to the State Human Resources Director and schedule time(s) and location(s) to meet with both parties, jointly or independently, to attempt to resolve the matter;
2. Has sole authority to determine whether the meeting includes the parties with their representatives, jointly or independently;
3. Should determine when the mediation is not viable, that an impasse exists, or that the mediation should end. The mediation cannot be unilaterally ended without the permission of the mediator; and
4. Should notify each party in writing, as to the status of the mediation process no later than ten calendar days prior to the scheduled Committee hearing, when the parties have not resolved the matter and a written agreement has not been signed.

D. Mediation Conferences

1. Mediation conferences are confidential and limited to no more than three representatives, including legal counsel and the covered employee, for each party. An observer who has been assigned to conduct mediations for DSHR may attend for training purposes if both parties to the mediation concur.
2. The parties or their representatives attending a mediation conference must have full authority to negotiate and recommend settlement.
3. Each covered employee may have representation at the mediation conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available relating to the conference. Documents submitted by the parties on the issue of reasonable justification must be received by DSHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the

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State Human Resources Director concludes the processing of the covered employee's appeal.

4. If the appeal is resolved, the mediator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for DSHR to assist in drafting the agreement.

E. Confidentiality

1. Any discussions by any of the parties concerned during the mediation process shall be kept confidential and shall not be used or referred to during subsequent proceedings.
2. The mediator may not be compelled by subpoena or otherwise to divulge records or discussions or to testify in regard to the mediation in any adversary proceeding or judicial forum.
3. All records, reports, documents, discussions, and other information received by the mediator while serving in that capacity are confidential.

19-718.07 APPEALS FORWARDED TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE

- A. If a resolution through mediation as required by Section 19-718.06 of the State Human Resources Regulations cannot be accomplished, the State Human Resources Director shall forward the appeal to the designated panel of the Committee.
- B. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during Committee hearings.

C. Witnesses

1. Notice - After an appeal has been determined to be appealable to the Committee and has been placed on the Committee's docket, the covered employee and the agency, or their designated representatives, shall exchange witness lists which must be received by the other party no later than five calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. Witness lists which have not been exchanged as required by this provision and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.
2. Character Witnesses - No more than three character witnesses for each side will be permitted to testify before the Committee when evidence of character is relevant to the issues. A character witness is defined as a witness offered solely for the purpose of presenting testimony which bears on the positive or negative general character of

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- the covered employee, i.e., the covered employee's reputation for truthfulness, peaceful or violent manner, or other considerations of character which have a bearing on the matter before the Committee.
3. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for witnesses at the request of either party. In the event that either party in an appeal has difficulty in obtaining a witness's agreement to testify, such party may request in writing the issuance of a subpoena which must be received by DSHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include the name of the witness. The service of the subpoena is the responsibility of the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred by a subpoenaed witness shall be paid by the requesting party.
 4. Sequestration of Witnesses - Witnesses other than representatives shall be sequestered and are prohibited from being in the hearing room whether the appeal is heard in a public hearing or heard in executive session. Exceptions to this prohibition include during preliminary comments, the Committee's opening statement, and that witness's testimony.
 5. Depositions de bene esse - The testimony of a witness may be submitted into evidence in the form of a deposition de bene esse when the attendance of the witness whose testimony is required cannot be had (a) by reason of (i) extreme age, (ii) sickness or infirmity, or (iii) indispensable absence on public official duty, (b) as a result of verification of his intended absence from the State before the appeal can be heard by the designated Committee panel, or (c) when such witness may be without the limits of the State. If the parties cannot agree to the use of a deposition de bene esse, the party desiring to submit the deposition de bene esse may request permission from the Committee Chairman or his designee and the Committee Attorney to submit the deposition de bene esse. The party opposing the submission will be permitted an opportunity to respond to the request. The request and the response may be made either in writing before or verbally at the hearing. When the parties agree upon, or a party's request is granted for the use of, a deposition de bene esse, notice must be exchanged as to the time of the deposition de bene esse to allow all interested parties to attend and participate. A copy of this notice should be sent to DSHR. No other types of depositions, including discovery depositions, are permitted.

D. Documents

1. Submission to DSHR and Exchange by the Parties - Any records, reports, and documentation submitted by either party to be forwarded to the Committee prior to the hearing must be received by DSHR no later than 15 calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has

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already elapsed at the time of the request to reschedule. Those documents submitted by both parties will be provided by DSHR to committee members prior to the hearings and considered to be the record during the hearing and marked into evidence as Committee Exhibit I. Each covered employee granted a hearing before the Committee will receive a copy of the records, reports, and documentation submitted by the agency. In like manner, a copy of any records, reports, and documentation filed by a covered employee will be sent to the agency.

2. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for files, records, and documentation on the grievance at the request of either party. In the event that either party in a case has difficulty in obtaining the production of files, records, and documentation on the grievance, such party may request in writing the issuance of a subpoena which must be received by DSHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include a description sufficiently specific to identify the documents in question and the name of the custodian of the documents in question. The service of the subpoena is the responsibility of the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred in the production of the documents shall be paid by the requesting party. Subpoenaed documents shall be received by the requesting party no later than five calendar days prior to the hearing or by the date indicated by the requesting party. Motions, by either party, to quash a subpoena must be made to the Administrative Law Court.
3. Committee Exhibit I
 - a. The State Human Resources Director shall arrange for the reproduction of records, reports, and documentation timely submitted by both parties and make this information available, prior to the date of the hearing, to the designated Committee panel and Committee Attorney for that hearing.
 - b. The documents transmitted by the State Human Resources Director to the designated Committee panel and Committee Attorney must be marked into evidence as "Committee Exhibit I" during the Committee Chairman's opening statement at the beginning of the hearing unless excluded by the Committee Attorney based on a prior objection raised by either party.

E. Panel Hearings

1. Scheduling and Notice - The State Human Resources Director shall establish a date, time, and place for the hearing of each appeal and provide reasonable notice to the covered employee, agency, designated Committee panel, and Committee Attorney.

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2. Continuances and Postponements - Prior to the commencement of the hearing, the State Human Resources Director has the authority to grant a postponement based upon extenuating circumstances.
3. Executive Session Hearings - All hearings before the State Employee Grievance Committee shall be in executive session unless the employee requests a public hearing in accordance with the Freedom of Information Act prior to the designated Committee panel voting to go into executive session. If the hearing is held in executive session, only the designated Committee panel, the parties involved in a hearing, the Committee Attorney, and persons approved by the designated Committee Chairman may attend.
4. Committee Members
 - a. The Committee shall consist of at least 18 and not more than 24 members who must be appointed by the Director of the Department of Administration in accordance with the Act.
 - b. The State Human Resources Director may divide the Committee into panels of five members to sit at hearings and designate a member to serve as the presiding officer and a member to serve as secretary at all panel hearings.
 - c. A chairman shall be elected from the membership of the Committee each year after approval of membership of new members by the Director of the Department of Administration. A meeting for election of a chairman shall be held as soon as practicable after appointments are made.
 - d. A quorum of a panel shall consist of at least three Committee members. No hearings may be conducted without a quorum.
 - e. Whenever an appeal before the Committee is initiated by or involves an employee of an agency of which a Committee member also is an employee or involves another impermissible conflict of interest, the Committee member is disqualified from participating in the hearing.
5. Committee Attorney
 - a. The Department of Administration is authorized to request assignment by the Attorney General of one or more of his staff attorneys admitted to practice law in South Carolina to serve in the capacity of Committee Attorney. If the Attorney General is not able to provide sufficient legal staff for this purpose due to an impermissible conflict of interest, the Department of Administration, with the approval of the Attorney General, is authorized to secure other qualified attorneys to serve as Committee Attorney.

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- b. The Committee Attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions and all legal issues.
6. Attendance by the Parties
 - a. Panel hearings will be conducted on the date and at the time scheduled unless the Committee, acting collectively or through its designated Committee Chairman, upon commencement of a hearing, grants a postponement based upon extenuating circumstances.
 - b. Each covered employee may have representation at the panel hearing and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend the panel hearing, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the panel hearing. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the party on this issue and based on other information available relating to the panel hearing. Documents submitted by the party on the issue of reasonable justification must be received by DSHR no later than 14 calendar days from the date of the scheduled panel hearing. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.
 - c. If the agency fails to appear at the panel hearing without reasonable justification, the designated Committee panel will base its decision on a review of Committee Exhibit I and a presentation of the case by the covered employee.
7. Administrative Assistance and Recordings of Hearings
 - a. The State Human Resources Director shall provide to the Committee from the resources of DSHR such administrative and clerical services as may be required.
 - b. All proceedings before the Committee shall be recorded by DSHR. The recording shall be preserved by DSHR.
8. Submission of Witness and Representative Lists to Committee - At the beginning of the hearing, each party shall provide to the secretary of the designated Committee panel a list of representatives and witnesses. Representatives who will testify must be listed as both a representative and a witness. Witness lists which have not been exchanged as required by Section 19-718.07 C. 1. of the State Human Resources Regulations and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.
9. Conduct of Hearings - The presiding Committee Chairman shall conduct the grievance hearing in an equitable, orderly, and expeditious fashion. The Committee

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will give effect to rules of privilege recognized by law. The parties shall be bound by the decisions of the presiding officer or Committee Attorney insofar as such hearings are concerned.

10. Opening Statements and Order of Presentation of the Case

- a. The designated Committee Chairman shall open the hearing by explaining the procedures to be followed in the hearing.
- b. Each party shall be given an opportunity to make an opening statement.
- c. The covered employee shall present his case first, followed by the agency.

11. Direct and Cross Examinations

- a. The testimony of witnesses shall be under oath or affirmation.
- b. Each party shall have the right to examine and cross-examine witnesses, as appropriate.
- c. The designated Committee Chairman, the Committee Attorney, or any member of the designated Committee panel may direct questions to any party or witness at any time during the proceedings.
- d. Each party may object to testimony, questions, or documents.

12. Evidentiary Matters - Evidentiary matters as governed by the South Carolina Administrative Procedures Act will apply in hearings before the Committee.

13. Interpretations from DSHR - The designated Committee Chairman of a designated Committee panel may request information or assistance in interpretations of rules and Regulations from the State Human Resources Director.

14. Closing Statement

- a. Before closing the hearing, the designated Committee Chairman shall allow the parties to make a closing statement.
- b. The covered employee will have the option of closing first or last.

F. Committee Deliberations and Written Committee Decisions

1. The designated Committee panel shall retire into executive session, without the parties present, to receive legal advice from the Committee Attorney and consider the evidence. The Committee Attorney may be present during the Committee's deliberations on its decision only upon the request of the designated Committee

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Chairman. No vote by the designated Committee panel may be taken in executive session except to come out of executive session.

2. Each member of the designated Committee panel shall vote on the merits of the appeal and the vote will be recorded.
3. Decisions of the Committee shall be determined by a simple majority of those members who heard the appeal.
4. Within 20 calendar days of the conclusion of the hearing, the designated Committee panel shall make its final written decision.
5. The final decision of the Committee as it relates to an appeal shall include the (1) findings of fact, (2) statements of policy and conclusions of law, and (3) the Committee's decision.
6. As governed by the provisions of the Act, the Committee may sustain, reject, or modify a grievance hearing decision of an agency.
7. Any member agreeing with the majority decision but differing with the rationale may prepare a concurring decision. Any member voting in the minority may prepare a dissenting opinion.
8. The Committee Attorney or the attorney for DSHR or both may assist the Committee in the preparation of its findings of fact, statements of policy, and conclusions of law.
9. The decision of the Committee shall be transmitted to the State Human Resources Director for notification to the covered employee and the agency or their representatives.
10. As a result of this final written decision, either the covered employee or the agency may request reconsideration within 30 calendar days from receipt of the decision.
11. The designated Committee panel shall request assistance from the Committee Attorney or the attorney for DSHR or both in the preparation of a written response to a request for reconsideration.
12. If no request for reconsideration is made or when a response is made to a request for reconsideration, the Committee decision is final in terms of administrative review.

19-718.08 APPEALS FORWARDED TO A MEDIATOR-ARBITRATOR

- A. "Mediation-arbitration" means an alternative dispute resolution process that provides for the submission of an appeal to the mediator-arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.

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B. The State Human Resources Director shall forward to a mediator-arbitrator all appeals which meet jurisdictional requirements and relate to the appeal of the following adverse employment actions: lack of promotional consideration and punitive reclassifications when the State Human Resources Director determines there is a material issue of fact regarding these issues, suspensions for ten days or fewer, and involuntary reassignments. In these cases, the arbitration decision is final in terms of administrative review. The provisions of the S.C. Administrative Procedures Act do not apply in the mediation-arbitration proceedings.

C. Selection and Assignment of the Mediator-Arbitrator

1. The mediator-arbitrator must be assigned by the State Human Resources Director and shall serve as an impartial third party to hold conferences to encourage and facilitate the resolution of the appeal and, if the appeal is not resolved, issue a decision which determines whether the covered employee substantiated that the agency's decision was not reasonable.
2. The State Human Resources Director shall maintain a pool of qualified mediator-arbitrators trained by DSHR in alternative dispute resolution, grievance, and related human resources issues.
3. The State Human Resources Director shall have the discretion to assign either two mediator-arbitrators, one to serve as mediator during the mediation phase and one to serve as arbitrator during the arbitration phase, or one mediator-arbitrator to serve as both mediator and arbitrator.

D. Mediation-Arbitration Conferences

1. The mediator-arbitrator shall review the documents which have been submitted by each party to the State Human Resources Director and shall schedule time(s) and location(s) to meet with both parties, jointly or independently.
2. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during mediation-arbitration conferences. An observer who has been assigned to conduct mediation-arbitrations for DSHR may attend for training purposes if both parties to the mediation-arbitration conference concur.
3. Each covered employee is entitled to representation at the conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available

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relating to the conference. Documents submitted by the parties on the issue of reasonable justification must be received by DSHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.

4. If the agency fails to appear at a conference without reasonable justification, the mediator-arbitrator will base an arbitration decision on a review of the documents which have been submitted by each party to the State Human Resources Director and a presentation of the case by the covered employee.
5. The parties or their representatives attending a conference must have full authority to negotiate and recommend settlement.

E. Mediation Phase

1. The mediator-arbitrator has sole authority to determine whether conferences during the mediation phase include the parties with their representatives, jointly or independently.
2. Initially, the mediator-arbitrator will attempt to assist the parties as a mediator in reaching a voluntary mutual resolution of the appeal.
3. The mediation phase cannot be unilaterally ended nor the arbitration phase begun without the permission of the mediator-arbitrator.
4. If the dispute is resolved, the mediator-arbitrator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for DSHR to assist in drafting the agreement.

F. Arbitration Phase

1. If the mediator-arbitrator determines that the parties are unable to reach a resolution of the appeal by mediation during, but no later than, the 20 calendar days immediately following the initial conference with either or both parties, then the mediator-arbitrator shall notify the parties that the arbitration phase will proceed, as appropriate.
2. Procedures for Arbitration Phase
 - a. During the arbitration phase, the parties will be allowed to submit to the mediator-arbitrator a concise written summary of the relevant issues involved in the appeal, notarized statements, and other additional documents or information. The parties must have provided the other party and the mediator-arbitrator with the written summary of relevant issues, any notarized statements from individuals who have knowledge about the issues on appeal, and other related documents or information

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concerning the appeal prior to the arbitration conference. The time for the exchange by the parties and submission to the mediator-arbitrator of the written summary of relevant issues, notarized statements, and other related documents or information will be determined by the mediator-arbitrator.

- b. During the arbitration phase, the mediator-arbitrator will allow each party a maximum of two hours to present his appeal, with the covered employee presenting his case first. Either the party or one of his representatives shall be designated as the spokesperson during the conference. No testimony will be allowed and others in attendance will not be allowed to speak or ask questions during the presentation of information. The parties may use the designated time to present any oral arguments concerning the issues on appeal. The covered employee may reserve a portion of the two hours to reply to the agency's contentions. This reply is limited only to information presented orally by the agency and shall not exceed one-half of the total time for the presentation of information. In extenuating circumstances, the mediator-arbitrator may increase or decrease the time each party has to present his appeal at the conference during the arbitration phase.
- c. The other party and his representatives may be present when a party presents his appeal during the arbitration phase.
- d. Conformity to legal rules of evidence shall not be necessary during the arbitration phase.
- e. At any time before the mediator-arbitrator makes a final arbitration decision, the mediation phase may be reopened at his initiative, or at his discretion upon request of a party.
- f. The mediator-arbitrator shall transmit to both parties a final written decision based on all documents properly submitted by both parties and the oral arguments presented during the arbitration phase within 45 calendar days after the mediator-arbitrator initially meets with either or both parties. This 45-day period may be extended by the State Human Resources Director under extenuating circumstances. When the expiration of this 45-day period occurs during the seven day waiting period required under the Older Workers Benefit Protection Act before a written agreement becomes effective, the State Human Resources Director will extend the 45-day period one day for each day remaining in the seven day waiting period.
- g. As a result of this final written decision, either the covered employee or the agency may request reconsideration by the mediator-arbitrator within 30 calendar days from receipt of the decision.

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- h. The mediator-arbitrator may request assistance from the attorney for DSHR or DSHR staff in the preparation of his final written decision and his written response to a request for reconsideration.

G. Confidentiality

1. The conferences with the parties are confidential and limited to the parties and their representatives, but other persons may attend with the permission of the parties and the mediator-arbitrator.
2. The mediator-arbitrator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation-arbitration in any adversary proceeding or judicial forum.
3. All records, reports, documents, discussions, and other information received by the mediator-arbitrator while serving in that capacity are confidential, except the documents which have been submitted by each party shall be the record during appellate review to the Administrative Law Court.

19-718.09 APPELLATE REVIEW OF ANY FINAL DECISION

Either party may seek appellate review to the Administrative Law Court from a final decision by the State Human Resources Director denying an appeal or by the State Employee Grievance Committee or mediator-arbitrator.

- A. A notice of appeal seeking appellate review to the Administrative Law Court must be initiated within 30 calendar days from receipt of the decision.
- B. A notice of appeal seeking appellate review of the final decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380 (5) (B) and 1-23-600 (D) of the S.C. Code of Laws.
- C. Only after an agency submits a written request to DSHR seeking approval of the Department of Administration may the agency file a notice of appeal seeking appellate review to the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the Director of the Department of Administration.
- D. The covered employee or the agency who first files the notice of appeal seeking appellate review of a State Employee Grievance Committee decision is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the hearing required for certification of the record to the Administrative Law Court.
- E. The record for appellate review of a decision made by a mediator-arbitrator shall be limited to the documents and information which have been submitted by each party and the final written decision of the mediator-arbitrator.

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- F. The record for appellate review of a decision made by the State Human Resources Director shall be limited to the documents and information which have been submitted by each party and the final written decision of the State Human Resources Director.
- G. The covered employee or the agency who first files the notice of appeal seeking appellate review of a final decision by (1) the State Human Resources Director denying an appeal; (2) the State Employee Grievance Committee; or (3) a mediator-arbitrator, is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the hearing required for certification of the record to the Administrative Law Court. In addition, the appealing party is responsible for all costs associated with providing the record on appeal to the Administrative Law Court.
- H. Neither the Department of Administration nor DSHR nor the State Human Resources Director nor the Committee nor the mediator-arbitrator may be named in the notice of appeal to the Administrative Law Court. However, any of these entities are entitled to make a motion in the Administrative Law Court to be allowed to intervene to participate in the appeal for appropriate reasons including their interest in defending their policies.

19-718.10 COMPUTATION OF BACK PAY

- A. Reinstatement of pay resulting from a reversed disciplinary action shall be less any other related income received, such as unemployment compensation, workers' compensation, State retirement benefits (only when the employee retires after the disciplinary action occurs and when the income is the result of a termination), and wages earned, for the period of time in which the pay was deducted and shall be accomplished in the following manner:
 - 1. The covered employee shall submit to the agency a notarized statement of any wages earned during the interim period of disciplinary action;
 - 2. The agency shall submit a written request for the covered employee's reinstatement of pay and a statement of back pay due, less any other related income, such as unemployment compensation, workers' compensation, State retirement benefits, and wages, to the State Human Resources Director;
 - 3. Any unemployment compensation earned by the employee will be verified by DSHR through the Department of Employment and Workforce. The amount of unemployment compensation provided by the Department of Employment and Workforce will be used in determining the final back pay amount.
 - 4. The computation of back pay must be in accordance with guidelines provided by the Office of the Comptroller General for agencies whose payroll is issued by the Comptroller General. For all other agencies, computation of back pay must be in accordance with applicable agency policies and procedures; and

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5. The State Human Resources Director must approve the amount of reinstatement pay due the employee. That approval is not subject to administrative appeal and will constitute the final administrative decision.
- B. The above procedure shall be followed in all reversed disciplinary actions.
- C. The intent of this Regulation is only to make the employee whole as if the disciplinary action had not occurred.

19-718.11 APPROVAL OF PERSONNEL SETTLEMENTS

It is the policy of the State Fiscal Accountability Authority that personnel settlement proposals be presented to the State Fiscal Accountability Authority for approval as outlined in the following:

- A. In all situations where a personnel settlement has not been negotiated or approved by the Office of the Attorney General under a plan approved by the Office of the Attorney General;
- B. In all human resources-related matters, after review and recommendation by the State Human Resources Director, excluding settlements which have been negotiated and approved by the Workers' Compensation Commission, Department of Employment and Workforce, Equal Employment Opportunity Commission, or South Carolina Human Affairs Commission; and
- C. In all other situations where specific approval of the State Fiscal Accountability Authority would be necessary to disburse funds mentioned under the settlement proposal. Exception: Personnel Settlements containing lump sum amounts where payment would be supplied by the Insurance Reserve Fund or an agency's Foundation Fund.
 1. All personnel settlement proposals shall contain such information as the State Fiscal Accountability Authority or its designee specifies.
 2. The State Human Resources Director may review and approve any personnel settlement of \$10,000 or less.

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19-719 SEPARATION FROM STATE SERVICE

SCOPE AND PURPOSE

This Regulation governs how the State government employment relationship may end.

19-719.01 CONTINUOUS STATE SERVICE AND BREAK IN SERVICE

A. Continuous State Service

Continuous State service is service with one or more agencies without a break in service.

B. Break in Service

An employee experiences a break in service when the employee:

1. Separates from State service.

Exception - When an employee moves from a position in which the employee earns both annual and sick leave to a position in which the employee only earns sick leave. All earned sick leave shall be transferred in accordance with Section 19-710.05 A.

2. Moves from one State agency to another and is not employed with the receiving agency within 15 calendar days following the last day worked (or approved day of leave) at the transferring agency.

Exception - Under extenuating circumstances an agency head may approve an extension from 15 calendar days up to but not in excess of six months for an employee in a full-time equivalent (FTE) position to be employed in another FTE position within State government without having a break in service. The approval must be made prior to the employee receiving a lump sum payment for unused annual leave and within 15 days of the last day the employee is in pay status.

3. Remains on leave for a period of more than 12 months.

Exceptions

- a. The employee is on a military tour of duty with reemployment rights protected under federal or State law.
- b. The employee is participating in the Government Employees Interchange Program as provided in Section 19-714.
- c. The employee is an academic personnel at an institution of higher learning on sabbatical leave.

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4. Separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within 12 months of the effective date of the separation.
5. Involuntarily separates from State service and the agency's decision is upheld by the State Employee Grievance Committee or by the courts.
6. Moves from an FTE position to a temporary, temporary grant, or time-limited position. Exception - When an employee in an FTE position moves to a temporary, temporary grant, or time-limited position within 15 calendar days following the last day worked (or approved day of leave) during the employee's TERI program period, he does not experience a break in service.

19-719.02 RESIGNATION

- A. An employee may resign orally or in writing. Such notification of resignation should be accepted by the agency in the same manner as provided, whether written or oral, and an oral acceptance of a resignation should be generally confirmed in writing. Once an employee's resignation is accepted, it may not be withdrawn, cancelled, or amended without consent of the agency head or his designee.
- B. Resignations should be given to provide a minimum of two weeks notice.
- C. Any employee who voluntarily submits a written resignation may not grieve or appeal under the State Employee Grievance Procedure Act.

19-719.03 TERMINATION

For purposes of the State Employee Grievance Procedure Act, termination is the action taken by an agency against an employee to separate the employee involuntarily from employment.

19-719.04 REDUCTION IN FORCE

- A. Statements of Policy
 1. The Division of State Human Resources shall develop a reduction in force model policy to assist an agency in its policy development. The Division of State Human Resources must review and approve each agency's reduction in force policy.
 2. Each agency shall develop a reduction in force policy. This requirement shall not apply to academic personnel. However, each institution of higher learning or medical institution of education and research shall develop a policy outlining the criteria for a reduction in force for these employees.
 3. Technical colleges are required to have a reduction in force policy.

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4. Employees on authorized leave are eligible to compete in a reduction in force as if they are not on leave.
5. When a covered employee is assigned lower level responsibilities or demoted as a result of a reduction in force implemented due to loss of funding, the employee's salary may be reduced on the effective date of the reduction in force. The agency head or his designee, at his discretion, may reduce the employee's salary to a salary either between 0%-15% below the employee's current salary or between the employee's current salary and the midpoint of the lower pay band. In exercising this discretion, the agency head or his designee may use the option which results in the greatest cost savings.

(Note: Regulation 19-719.04 A. 5. only applies to decreases in salary as a result of a reduction in force implemented due to loss of funding and is an exception to salary decreases when a covered employee is assigned lower level responsibilities or demoted as listed in Sections 19-705 and 19-706.)

B. Reduction in Force Plan

1. Each agency shall submit a reduction in force plan to DSHR for review and approval for procedural correctness prior to its implementation.
2. A reduction in force plan must include:
 - a. A reason for the layoff as defined by the agency. These circumstances shall be either agency reorganization, work shortage, loss of funding, or outsourcing/privatization. If the reason for the reduction in force is due to a loss of funding, DSHR will forward a copy of the plan to the Executive Budget Office for concurrence on the budgetary issue prior to final approval.
 - b. The competitive area(s) in which the reduction in force will apply. Competitive area(s) shall be determined by the agency according to critical needs. Any covered employee affected by a reduction in force shall have bumping rights within a competitive area(s).
 - c. The competitive group(s) within the competitive area(s) as defined by the agency including any employees in specified competitive area(s).
 - d. The proposed list of employees to be affected by the reduction in force which includes:
 - (1) The age, race, and sex of all employees in the competitive group(s); and
 - (2) A preliminary list of employees in each group in retention point order.

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- e. The efforts that will be made to assist laid off employees to find other employment, including notice to DSHR.
- f. A current organizational chart showing the competitive area(s) and competitive group(s).
- g. Justification of the use of any retention of necessary qualifications as provided in the agency's reduction in force policy.

3. Implementation

After a reduction in force plan is reviewed and approved by DSHR for procedural correctness and before it becomes effective, an agency representative shall inform affected employees of the following:

- a. The reason for the reduction in force;
- b. The competitive area(s) and competitive group(s);
- c. The effects of the reduction in force upon State benefits;
- d. The assistance offered by DSHR;
- e. The employee's recall rights; and
- f. The method of notification should a job become available.

4. Reduction in Force Rights

- a. Any covered employee affected by a reduction in force shall retain covered status and recall rights for a period of one year from the date of separation.
- b. Employees who are affected by the reduction in force shall be recalled in inverse order based on retention points should a position become available within the competitive area.
- c. A covered employee who is separated due to a reduction in force shall retain continuous service if the employee is reinstated within one year from the date of separation.
- d. An employee who is separated by an agency by a reduction in force and is subsequently reinstated within one year shall have his sick leave restored and shall be given the option of buying back all, some, or none of his annual leave at the rate at which it was paid out.

5. Grievance Rights

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A covered employee who is affected by a reduction in force may grieve or appeal the reduction in force under the State Employee Grievance Procedure Act if the appeal is based on inconsistent or improper application of a reduction in force policy or plan.

19-719.05 EXIT INTERVIEWS

- A. Each agency should establish a procedure for obtaining separation information from each employee who separates from State service. This procedure should include an exit interview to reflect the specific reasons for the employee's separation. A reasonable effort should be made to interview the employee to obtain the information.
- B. Each agency should maintain and summarize a general file on all exit interviews for review by management.

19-719.06 ANNUAL AND SICK LEAVE UPON SEPARATION

- A. Section 19-709.05 explains the applicable annual leave provisions when an employee separates from State service.
- B. Section 19-710.06 explains the applicable sick leave provisions when an employee separates from State service.

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19-720 RECORDKEEPING

SCOPE AND PURPOSE

This Regulation governs the recordkeeping requirements for human resources programs.

19-720.01 STATEMENT OF POLICY

Each agency shall establish and maintain all records required by State law or the Division of State Human Resources (DSHR) concerning human resources programs.

19-720.02 EMPLOYEE RECORDS

A. Each agency shall establish and maintain an official human resources file for each employee which shall include, but not necessarily be limited to, the following:

1. Employment application;
2. All human resources actions reflecting the employee's work history with the agency;
3. Documentation directly related to the employee's work record; and
4. All performance evaluations.

(Refer to Section 19-707.02 J. 3.)

B. An employee's official human resources file shall be available for the employee's review upon request.

19-720.03 RECORDS RELEASE

A. In response to requests for information from human resources records, agencies may provide, pursuant to the Freedom of Information Act, an employee's name, date of employment, title, sex, and race. The determination to disclose other types of information should be made on a case by case basis. Requests for salary information should be answered in accordance with the Freedom of Information Act. *(Refer to Section 19-703.05.)*

B. In responding to requests for information concerning current or former employees by prospective employers under § 41-1-65 of the South Carolina Code of Laws, agencies may provide information as follows:

1. Agencies responding to oral requests for information may disclose an employee's or former employee's dates of employment, pay level, and wage history.
2. Agencies responding to written requests may disclose the following information to

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which an employee or former employee may have access:

- a. Written employee evaluations;
 - b. Official human resources notices that formally record the reasons for separation;
 - c. Whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and
 - d. Information about job performance.
3. Agencies shall not knowingly or recklessly release or disclose false information.
 4. Responses to requests under § 41-1-65 of the South Carolina Code of Laws should be considered in conjunction with the Freedom of Information Act.

19-720.04 CENTRAL HUMAN RESOURCES DATA SYSTEM

Refer to Section 19-701.05.

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