

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION



EMPLOYEE GRIEVANCE POLICY AND PROCEDURES

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Effective: 12/01/2013

POLICY STATEMENT

It is the intent of the North Carolina Department of Transportation (NCDOT) to ensure that all employees have access to the Department's Employee Grievance Policy and Procedures. This policy and procedures are in accordance with the Office of State Human Resources policy, and approved by the NC Human Resources Commission. These procedures will be posted in a conspicuous location at all NCDOT facilities. It is also available on the portal on the Human Resources page document library under NCDOT HR Manual, section 8, Discipline, Appeals and Grievances. New employees will be informed of the policies and procedures during employee orientation training sessions. In the event changes are made, these changes will be communicated to all employees.

Secretary
Department of Transportation

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Objectives

In establishing this Employee Grievance Policy and Procedures, the NC Department of Transportation (NCDOT) seeks to achieve the following objectives:

1. Ensure employees have access to grievance procedures to address grievable issues timely, fairly and without fear of reprisal; and
2. Resolve workplace issues efficiently and effectively

Definitions

The following are definitions of terms used in this policy:

TERM	DEFINITION
Agency	A department, university, office, board or commission
Alleged Event or Action	The precipitating workplace event or action or the receipt of a notice of an event or action that is the basis for filing the grievance
Applicant	A person who submits an application for initial hire, promotion or re-employment for a position in a State agency
Career State Employee	An employee who is in a permanent position and has been continuously employed by the State in a position subject to the NC Human Resources Act for the immediate 24 preceding months
Contested Case Issue	A grievable issue that may be appealed to the Office of Administrative Hearings (OAH)
Complainant	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates an informal complaint through the Equal Employment Opportunity (EEO) Informal Inquiry process
Employee Relations Committee	An agency appointed panel of no less than 3 members selected to conduct a hearing. The Employee Relations Committee chair has the responsibility to oversee the proceedings of the hearing and submit a proposed recommendation for a Final Agency Decision (FAD).
Equal Employment Opportunity Informal Inquiry	An informal process for addressing allegations of unlawful discrimination, harassment and retaliation that may facilitate a resolution prior to the filing of a grievance
Final Agency Decision	The final decision issued by the NCDOT Secretary that concludes the internal grievance process
Grievable Issue	A workplace event or action as defined by NC State statute as grievable that allows an eligible employee to challenge the alleged workplace event or action through established grievance procedures for resolution
Grievant	An applicant, probationary State employee, former probationary State employee, career State employee or former career State employee who initiates a grievance

TERM	DEFINITION
Hearing	A proceeding overseen by an Employee Relations Committee that allows the grievant to present information relevant to the nature of the grievance and the remedies sought.
Impasse	An impasse occurs when mediation does not result in an agreement
Informal Discussion	An informal process for addressing a grievable issue that may facilitate a resolution prior to the filing of a grievance
Internal Grievance Process	The process available to an applicant, probationary State employee, former probationary State employee, career State employee or former career State employee to file a formal grievance based on issues that are defined as grievable by NC State statute
Internal Grievance Process Timeframe	The internal process must be completed within 90 calendar days. Time spent in the Informal Discussion and the EE Informal Inquiry is not included in the 90 day timeframe.
Mediation	The process facilitated by a neutral third party in which the grievant and the NCDOT respondent attempt to resolve a grievance in a mutually acceptable manner. Responsibility for resolving the grievance rests with the parties.
Mediation Agreement	The written agreement resulting from the successful resolution of a grievance reached in mediation. The Mediation Agreement is legally binding on both parties.
Mediator	A neutral third party(s) approved by the Office of State Human Resources (OSHR) whose role is to guide the mediation process, facilitate communication, and assist the parties to generate and evaluate possible outcomes for a successful resolution. A mediator does not act as a judge and does not render decisions.
Probationary State Employee	An employee who is in a permanent position but has not attained career status by being continuously employed by the State in a position subject to the NC Human Resources Act for the immediate 24 preceding months
Respondent	A designated NCDOT representative who has the authority to respond to a grievance and negotiate an agreement on behalf of the department for the express purpose of resolving that issue in a mutually acceptable manner

I. GRIEVABLE ISSUES AND WHO MAY GRIEVE

The following table lists all issues that may be grieved by an applicant for State employment, a probationary State employee or former probationary State employee, and a career State employee or former career State employee.

The following issues may be grieved through the NCDOT internal grievance process only.

Applicant for State employment (initial hire, promotion or re-employment)	<ul style="list-style-type: none">• Denial of request to remove inaccurate and misleading information from applicant file (excludes the contents of a performance appraisal and written disciplinary action).
Probationary State employee or former probationary State employee	<ul style="list-style-type: none">• Denial of request to remove inaccurate and misleading information from personnel file (excludes the contents of a performance appraisal and written disciplinary action).

In addition to the grievable issues listed above, a **career State employee or former career State employee** may also grieve the following issue.

Career State employee or former career State employee	<ul style="list-style-type: none">• Overall performance rating of less than “meets expectations” or equivalent as defined in the Performance Management Policy.
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The following issues must first be grieved through the internal grievance process prior to being eligible to file an appeal with the Office of Administrative Hearings (OAH).

If the grievant is not satisfied with the Final Agency Decision (FAD), the grievant may appeal to OAH.

Who May File	Grievable Issues
<p>Applicant for State employment (initial hire, promotion or re-employment)</p>	<ul style="list-style-type: none"> • Denial of hiring or promotional opportunity due to failure to post position (unless hiring opportunity is not required to be posted by law). • Denial of veteran’s preference as provided by law. • Unlawful discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information or political affiliation if the applicant believes he or she has been discriminated against in his or her application for employment. • Retaliation for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex, age, disability, genetic information or political affiliation if the applicant believes he or she has been retaliated against in his or her application for employment.
<p>Probationary State employee or former probationary State employee</p>	<ul style="list-style-type: none"> • Denial of hiring or promotional opportunity due to failure to post (unless hiring opportunity is not required to be posted by law). • Denial of veteran’s preference as provided by law. • Any retaliatory personnel action for reporting improper government activities (“whistle blower”). • Unlawful discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information or political affiliation if the employee believes that he or she has been discriminated against in the terms and conditions of employment. • Retaliation against an employee for protesting (objecting to or supporting another person’s objection to) unlawful discrimination based on race, religion, color, national origin, sex, age, disability, genetic information or political affiliation if the employee believes that he or she has been retaliated against in the terms and conditions of employment.

In addition to the grievable issues listed above, a **career State employee or former career State employee** may also grieve the following issues.

<p>Career State employee or former career State employee</p>	<ul style="list-style-type: none"> • Dismissal, demotion or suspension without pay for disciplinary reasons without just cause. • Involuntary non-disciplinary separation due to unavailability. • Denial of re-employment or hiring due to denial of Reduction-in-Force priority as required by law (N.C.G.S. 126-7.1). • Denial of promotional opportunity due to failure to give priority consideration for promotion to a Career State employee as required by law (N.C.G.S. 126-7.1).
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II. GRIEVANCE PROCESS FOR ALL GRIEVABLE ISSUES

A grievance or complaint must be filed within **15 calendar days** of the alleged event or action that is the basis of the grievance. Unlawful discrimination, harassment or retaliation complaints must be filed under the Equal Employment Opportunity (EEO) Informal Inquiry process before proceeding to the formal internal grievance process. All other grievable issues must first be discussed with the immediate or other appropriate supervisor in the employee's chain of command or other appropriate personnel or agency that has jurisdiction regarding the alleged event or action that is the basis of the grievance prior to filing a formal grievance with the exception of disciplinary action grievances. Disciplinary action grievances as well as non-disciplinary separation due to unavailability shall proceed directly to the formal internal grievance process.

III. EQUAL EMPLOYMENT OPPORTUNITY INFORMAL INQUIRY FOR UNLAWFUL DISCRIMINATION, HARASSMENT OR RETALIATION

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee (hereafter referred to as complainant) alleging unlawful discrimination, harassment or retaliation shall first file a complaint with the agency Equal Employment Opportunity (EEO) Officer or Affirmative Action (AA) Officer within 15 calendar days of the alleged discriminatory or retaliatory act that is the basis of the complaint. If the complainant alleges facts that would constitute unlawful discrimination, harassment, or retaliation as prohibited by law, the complaint will be investigated as a part of the EEO Informal Inquiry. The investigation will determine if the facts support a finding that there is reasonable cause to believe the alleged act rises to the level of unlawful discrimination, harassment or retaliation.

The agency has **45 calendar days** from receipt of the complaint to investigate and respond to the complainant, unless the complainant and the employer mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension shall not exceed **15 calendar days**.

At the conclusion of the investigation, the agency shall communicate the outcome of the investigation in writing to the complainant. If there is reasonable cause to believe that unlawful discrimination, harassment, or retaliation occurred, management shall take appropriate action to resolve the matter. If the complaint is successfully resolved, the complainant will sign a letter of agreement with the agency detailing the terms of the resolution. The agency shall ensure that the terms of the agreement under the control of the agency are implemented. If the complaint is not successfully resolved, then the complainant may continue the process by filing a formal grievance within **15 calendar days** of the written response from the EEO Informal Inquiry.

At any point in the grievance process, the complainant/grievant has the right to bypass discussions with or review by the alleged offender. Time spent in the EEO Informal Inquiry is not a part of the formal internal grievance process.

External Filing of a Discrimination Charge

The complainant alleging unlawful discrimination, harassment or retaliation has the right, at any time, to bypass or discontinue the EEO Informal Inquiry or the formal internal grievance process and file a charge directly with the Equal Employment Opportunity Commission. The complainant may not, however, file a contested case with the Office of Administrative Hearing if the internal process has not been completed.

Information about filing an EEOC charge can be found at: <http://www.eeoc.gov/employees/charge.cfm> or by calling the EEOC regional offices located in Raleigh, Greensboro and Charlotte at 1-800-669-4000.

Information about filing through the Civil Rights Division of the Office of Administrative Hearings can be found at: <http://www.ncoah.com/civil/> or by calling (919) 431-3036.

Simultaneous Internal and External Filing

An applicant for State employment, probationary State employee, former probationary State employee, career State employee or former career State employee may file simultaneously with the Equal Employment Opportunity Commission (EEOC) at any point in either the EEO Informal Inquiry or the formal internal grievance process.

IV. INFORMAL DISCUSSION

A grievance must be filed within **15 calendar days** of the alleged event or action that is the basis of the grievance. Prior to filing a grievance about any issue, excluding unlawful discrimination, harassment or retaliation and disciplinary actions, non-disciplinary separation due to unavailability, the employee shall first discuss the grievable issue with the immediate or other appropriate supervisor in the employee's chain of command or other appropriate personnel or agency that has jurisdiction regarding the alleged event or action that is the basis of the grievance. Disciplinary action grievances, including separation due to unavailability, shall bypass the Informal Discussion with Supervisor and proceed directly to the formal internal grievance process.

The employee must clearly declare to the supervisor or other appropriate personnel that the Informal Discussion request is regarding an alleged event or action that is the basis of a potential grievance. The supervisor or other appropriate personnel shall confirm the intention of the requested Informal Discussion with the employee before beginning discussions.

This informal process must be completed within the **15 calendar day** timeframe. However, if progress is being made toward a successful resolution to the dispute or if there are occurrences that are unavoidable or beyond the control of either party, both parties may agree to an extension. This extension must be agreed to in writing and approved by HR and shall not exceed **15 calendar days**.

The supervisor shall notify NCDOT Human Resources when an employee requests an informal discussion. The supervisor or other appropriate personnel is responsible for attempting to resolve the grievable issue with the employee. The Employee Relations Representative assigned to the employee's division or unit shall serve as a resource during these discussions and will work with both parties to strive for a timely resolution.

The outcome of the informal discussion shall be communicated to the employee and NCDOT Human Resources by the supervisor or other appropriate personnel in writing. If the informal discussion is unsuccessful in resolving the grievable issue, the employee may choose to file a formal grievance. If no written response is provided by the supervisor within the **15 calendar day** timeframe, the employee may proceed by filing a formal grievance. Time spent in the Informal Discussion is not a part of the formal internal grievance process. Grievances must be filed in writing with the Human Resources Director or designee to:

NCDOT Human Resources Director
1519 Mail Service Center
Raleigh, NC 27699-1519

Grievance Process for Disciplinary Actions

Disciplinary action grievances, to include dismissal, demotion, suspension without pay, and separation due to unavailability, shall bypass the Informal Discussion and proceed directly to the formal internal grievance process.

V. FORMAL INTERNAL GRIEVANCE PROCESS

STEP 1 – Mediation

Mediation is the process in which a grievant and an agency respondent use a neutral third party(s) to attempt to resolve a grievance. Mediation provides the grievant and the agency respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution.

1. Purpose of Mediation

Mediation provides the grievant and the appropriate NCDOT supervisor/manager an opportunity to openly discuss the grievance in a less adversarial environment with the goal of reaching a mutually acceptable solution.

2. Mediation Process

The Mediation/Hearing Coordinator shall submit the request for mediation within **3 business days** of receipt of the grievance to the Office of State Human Resources (OSHR) for assignment of the mediator(s). Only OSHR-approved mediators will mediate grievances for State agencies. OSHR will maintain a pool of qualified mediators to facilitate mediations. Mediators will NOT be selected from the NCDOT to conduct mediations within the department.

3. Assignment of Respondent and Mediation Attendees

The Mediation/Hearing Coordinator will notify the director of the division or unit from which the grievance arises and request that the director designate a management representative to serve as the respondent for the mediation. The mediation attendees will be limited to the employee, former employee or applicant who initiated the grievance, the designated agency representative serving as the respondent for the mediation who has the authority to negotiate an agreement on behalf of the NCDOT, and the OSHR-appointed mediator(s). Attorneys and other advisors **may not** attend the mediation. Either party may ask for a recess at any time in order to consult with an attorney or other advisor. Emergency substitution of a mediator must be approved by the OSHR Mediation Director or designee. The OSHR Mediation Director or designees may attend mediations as observers.

4. Location and Time Allocation of Mediation

The Mediation/Hearing Coordinator shall schedule the mediation for an amount of time determined by the mediator(s) to be sufficient and in a location approved by the OSHR Mediation Director or designee. Mediation may be recessed by the mediator(s) and reconvened at a later time.

The mediation process shall be concluded within **35 calendar days** from the receipt of the grievance unless the employee and the NCDOT mutually agree to extend the time due to extenuating circumstances.

Audiotape, videotape, recording devices, and transmission devices are not permitted during the mediation.

Post Mediation

1. When an agreement is reached, the following shall occur:
 - a. The grievant and the respondent will sign a Mediation Agreement that states the terms of the agreement and is intended to be a legally binding document.
 - b. The original signed Mediation Agreement is provided to the NCDOT Human Resources Office. A copy of the signed Mediation Agreement is provided to the grievant, respondent and the OSHR Mediation Director.
 - c. The NCDOT Human Resources Office shall ensure that the terms of the mediation agreement are implemented.
2. When an agreement is not reached (impasse), the following shall occur:
 - a. The grievant and respondent will sign a Notice of Impasse stating that the mediation did not result in an agreement.
 - b. The original signed Notice of Impasse is provided to the NCDOT Human Resources Office. A copy of the signed Notice of Impasse is provided to the grievant, the respondent and the OSHR Mediation Director.
 - c. At the end of the mediation session, the respondent shall provide the grievant information regarding Step 2 of the internal grievance process and inform the grievant that the Step 2 filing must be received by the NCDOT Human Resources Office within **5 calendar days** of the date of the mediation.

Limitations on a Mediation Agreement

The Mediation Agreement shall serve as a written record and shall:

- a. Not contain any provision(s) contrary to NC Human Resources Commission policies, administrative rules, and applicable state and federal laws.
- b. Not contain any provision(s) that exceed(s) the scope of the parties' authority; and
- c. Not be transferrable to another State agency.

When mediation resolves a grievance but it is determined upon review by NCDOT or OSHR that one or more provisions of the Mediation Agreement do not comply with the NC Human Resources Commission policies or rules or applicable state or federal laws, the mediation shall be reconvened to resolve the specific issue(s). If the parties are unable to resolve the non-compliance issue(s), the mediation will impasse and the grievant may proceed to Step 2 of the internal grievance process.

Should additional information or clarification be needed to effectuate the terms of the agreement, communication with all parties may occur via telephone. In the event the mediator who facilitated the mediation is not available, the OSHR Mediation Director or designee will have the authority to stand in place of the mediator in these communications.

Confidentiality of Documents Produced in Mediation

All documents generated during the course of mediation and any communications shared in connection with mediation are confidential to the extent provided by law.

Mediation Agreement Approval

The approval of the Director of the Office of State Human Resources is required for mediation agreements that need a personnel transaction to be processed, except where the only action is the substitution of resignation for dismissal. If a mediation agreement involves an exception to NC Human Resources Commission policy, the approval of the Director of the Office of State Human Resources is required.

Mediation Responsibilities:

1. The grievant is responsible for:

- a. Attending the mediation as scheduled by NCDOT;
- b. Notifying the Mediation/Hearing Coordinator in advance of the scheduled mediation if occurrences that are unavoidable or beyond the control of the grievant prevent attendance at the mediation;
- c. Preparing for the mediation by being able to orally present clear and concise information regarding the issues surrounding the grievance and the remedies sought; and
- d. Making a good faith effort to resolve the grievance.

A grievant who has an unexcused failure to attend mediation as scheduled forfeits the right to proceed with the internal grievance process.

2. The respondent is responsible for:

- a. Attending the mediation as scheduled by NCDOT;
- e. Notifying the Mediation/Hearing Coordinator in advance of the scheduled mediation if occurrences that are unavoidable or beyond the control of the respondent prevent attendance at the mediation;
- b. Preparing for the mediation by becoming knowledgeable regarding the issues surrounding the grievance and the remedies sought;
- c. Consulting with management, NCDOT Human Resources and/or legal counsel regarding possible areas of negotiation for grievance resolution; and
- d. Making a good faith effort to resolve the grievance.

STEP 2 – Hearing

If mediation does not result in a resolution at Step 1, the employee is entitled to proceed to Step 2 of the internal grievance hearing process. The grievant will be advised by the respondent at the conclusion of the mediation of his or her opportunity to present the grievance orally to an Employee Relations Committee.

1. Employee Relations Committee Process

The employee must submit their request to move to Step 2 to the Mediation/Hearings Coordinator within **5 calendar days** of the mediation. The request shall include a written summary explicitly stating the specific facts of the complaint. At the employee's request the Mediation/Hearings Coordinator or the Employee Relations Representative assigned to the employee's division or unit may advise the employee on relevant policies, procedures and requirements related to preparation of the request and the written summary of facts of the appeal. The hearing process shall be concluded within **35 calendar days** of filing Step 2 of the grievance process unless the employee and the NCDOT mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party. Any extension of Step 1 will not extend the 90 calendar day timeline.

2. Location and Time

Each party whose attendance is required (or requested) shall be notified at least **7 calendar days** in advance of the scheduled date, time, and location of the hearing.

3. Appointment and Composition of the Employee Relations Committee

Upon receipt of the grievant's appeal, the Mediation/Hearings Coordinator shall appoint an Employee Relations Committee to conduct the hearing. The Employee Relations Committee shall consist of three (3) voting members who are not from the same division or unit as the employee appealing, and two alternate committee members. The committee shall consist of the following:

- a. Chairperson;
- b. Employee from any Division of NCDOT, excluding Human Resources;
- c. Employee with the same basic occupational classification as the aggrieved employee. For example, if a hearing is being held for an Engineer (Journey), then either an Engineer (Contributing) or an Engineer (Advanced) could serve on the committee. This applies to any classification as long as there is not more than a three (3) pay grade difference in the classification of the aggrieved employee and the employee serving on the committee. Exceptions may be made when necessary, for example, when the occupational classification is unique without a comparable position; and
- d. Employees to serve as alternate committee members.

4. Right to Challenge Appointed Employee Relations Committee Members Impartiality

The names of two (2) proposed committee members and one (1) alternate committee member will be submitted to the grievant and management within **7 calendar days** prior to the date of the hearing. The grievant has the right to substitute up to two (2) committee members with the alternate committee member(s). The names of the two (2) alternate committee members will not be provided to either grievant or management's representative prior to the hearing. To challenge a committee member's ability to render an impartial recommendation due to a real or perceived conflict of interest, a written request must be submitted to the Mediation/Hearing Coordinator at least **3 calendar days** prior to the scheduled date of the hearing. The Mediation/Hearing Coordinator will review the challenge and replace the Employee Relations Committee member as appropriate.

5. Representation

Attorneys and other advisors may not attend the hearing. Either party may ask for a recess at any time in order to consult with an attorney or other advisor.

6. Witnesses

Management's representative and the grievant shall each submit to the Mediation/Hearing Coordinator, for approval, a list of no more than five (5) witnesses to be called on their behalf to attend the hearing. The Mediation/Hearing Coordinator will provide a complete list of the witnesses' names for the opposing parties. If the grievant or management's representative testifies, he/she must offer his/her testimony first **and** he/she is considered one of the five (5) witnesses allowed for each party. If either party feels additional witnesses are needed, a written justification must be submitted to the Mediation/Hearing Coordinator for either approval or disapproval of the request. The

Mediation/Hearing Coordinator must receive requests for witnesses at least **7 calendar days** prior to the date of the hearing. It is mandatory that all witnesses who are employed by the NCDOT attend the hearing. Witnesses not employed by the department may be requested to attend the hearing; however, the NCDOT cannot require their attendance. Witnesses shall be limited to only those individuals who have direct and relevant knowledge of the event or occurrence that is being grieved.

7. Hearing Attendees

- a. The employee who initiated the grievance;
- b. Management's Representative;
- c. The Employee Relations Committee members;
- d. Witnesses, as approved by the Mediation/Hearing Coordinator in accordance with policy; and
- e. The Mediation/Hearing Coordinator

8. Grievance Presented to Employee Relations Committee

The Employee Relations Committee chairperson will preside over the hearing to allow the parties to present information relevant to the nature of the grievance, facts upon which the grievance is based and the remedies sought. Both the grievance and management's representative must submit a copy of any exhibits that he or she intends to provide to the committee at the hearing along with an explanation as to how each document will be used to support the case. The exhibits must be submitted to the Mediation/Hearing Coordinator no later than **ten (10) calendar days** prior to the scheduled hearing. Upon receipt, each exhibit will be reviewed by, and discussed with, the Chairperson to determine the admissibility of each document. Upon completion of review of the documents, the Mediation/Hearing Coordinator will notify each party of the ruling(s) made by the Chairperson. Each party shall be given a fair opportunity to present evidence on the issues to be heard and to question witnesses. The chairperson of the Employee Relations Committee shall be empowered to:

- a. Determine the admissibility of all evidence.
- b. Rule on all motions.
- c. Prescribe the order in which evidence shall be presented.
- d. Direct the removal of any persons disrupting the orderly conduct of the hearing.
- e. Request the presentation of facts pertinent to the hearing by any employee.
- f. Exclude witnesses from the hearing room.
- g. Take any other action necessary to ensure a fair and impartial hearing.

9. Burden of proof

- a. *Adverse personnel action:* Management has the burden of proof in "just cause" cases (dismissals, demotions and suspensions without pay).
- b. *Discrimination and retaliation:* Where discrimination or retaliation is alleged, the employee has the burden of proof.
- c. *Other actions:* The applicable statute, regulation or other provision shall determine the burden of proof in law.

10. Evidence

- a. The strict Rules of Evidence shall not apply.
- b. Witnesses shall not be sworn.
- c. The chairperson shall rule upon any objections to the relevance and admissibility of any documents or testimony.
- d. The chairperson may, in his or her discretion, exclude any evidence if its value to the committee is substantially outweighed by the risk that it will necessitate undue consumption of time or create substantial danger of undue prejudice or confession.

11. Recording of Hearing

All Employee Relations Committee hearings shall be recorded by the Mediation/Hearing Coordinator to enable the committee to review the testimony before making a recommendation and to assist the Secretary or his/her designee in making a final decision. Copies of the recording of the Employee Relations Committee hearing are available to the grievant. To obtain copies of this recording, the grievant must provide the necessary number of digital media required to copy the recording. **Please be advised**

that recording the hearing by any party other than the Mediation/Hearing Coordinator is not allowed.

12. Confidentiality of Hearing

All other documents generated during the course of the hearing and any communications shared in connection with the hearing are confidential to the extent provided by law.

13. Format of Hearing

- a. Prior to the presentation of evidence, the chairperson shall introduce the committee and other parties involved, explain the purpose of the hearing and the functions of the committee, and describe the procedures to be followed.
- b. The parties may make an opening statement summarizing the evidence they intend to present and the conclusions that or which can be drawn from the evidence.
- c. The party with the burden of proof shall make the first presentation. Each presentation should include the party's own statement and direct examination, in addition to cross examination of witnesses by the opposing party. The committee members may ask questions. Witnesses may not ask questions.
- d. Each party may make a closing statement. The party with the burden of proof shall make the last statement.

14. Proposed Recommendation for Final Agency Decision

The Employee Relations Committee Chair will draft a proposed recommendation for a final agency decision including an explanation and justification to support the recommendation. The proposed recommendation shall be submitted to the Secretary of Transportation and the Director of the Office of State Human Resources for review within **5 calendar days** of the date of the hearing. The Secretary or his/her designee may provide a memorandum with comments on the proposed recommendation to the Director of OSHR or designee.

15. Office of State Human Resources Review

The Director of the Office of State Human Resources or designee shall review the proposed recommendation for a Final Agency Decision based on established criteria. The Director or designee may approve as written or may provide recommendations for modification or reversal within **10 calendar days** of receipt of the recommendation. Committee recommendations must be in compliance with NC Human Resources Commission policies or rules or applicable state or federal laws. The proposed FAD shall not be issued nor become final until reviewed and approved by the Office of State Human Resources.

16. Final Agency Decision

The NCDOT shall consider the recommendation of the Director of OSHR and issue its final agency decision (FAD) to the employee within **5 calendar days** of the date the recommendation is returned from the Director of OSHR. The FAD shall be issued in writing within **90 calendar days** of the initial filing of the grievance. The FAD shall include information about applicable appeal rights.

17. Settlement Approval

The approval of the Director of State Human Resources is required for settlements that need a personnel action processed, except where the only personnel action is the substitution of a resignation for a dismissal. If a settlement involves an exception to the NC Human Resources Commission policy, the approval of the Director of OSHR is required.

18. Grievant Responsibilities

The grievant is responsible for:

- a. Attending the hearing as scheduled by NCDOT;
- b. Notifying the Mediation/Hearing Coordinator in advance if circumstances prevent attendance at the scheduled hearing;
- c. Preparing for the hearing by being able to present clear and concise information regarding the issues surrounding the grievance and remedies sought; and
- d. Making a good faith effort to resolve the grievance.

In the event the grievant fails to appear for the hearing, or leaves prior to the beginning of the hearing, the grievant will be considered to have forfeited and/or waived all rights to pursue his/her appeal and the case will be administratively closed.

Requests for postponement of a scheduled hearing must be submitted in writing to the Mediation/Hearing Coordinator. Such requests may be granted only upon a showing of good cause.

19. Respondent Responsibilities

The respondent is responsible for:

- a. Attending the hearing as scheduled by NCDOT;
- b. Notifying the Mediation/Hearing Coordinator in advance if circumstances prevent the respondent from attending a scheduled hearing;
- c. Preparing for the hearing by becoming knowledgeable regarding the issues surrounding the grievance and the remedies sought; and
- d. Making a good faith effort to resolve the grievance.

20. Employee Relations Committee Chair Responsibilities

The Employee Relations Committee is responsible for:

- a. Calling the hearing to order and establishing the process for the proceedings;
- b. Maintaining order and decorum;
- c. Ensuring that all parties are allotted adequate time to present evidence and question witnesses; and
- d. Submitting a proposed recommendation with findings of fact for a Final Agency Decision.

21. The Mediation/Hearing Coordinator Responsibilities

The Mediation/Hearing Coordinator is responsible for:

- a. Verifying all mandatory witnesses requested by grievant and management's representative are present prior to the opening of the hearing;
- b. Monitoring the hearing to ensure that all applicable policies and procedures are followed; and
- c. Being available to assist with the interpretation and explanation of policies and procedures as they relate to a case.

STEP 3 – Appeal to the Office of Administrative Hearings

If the grievant is not satisfied with the final agency decision (FAD), the grievant may file a Petition for a Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be appealed. An Administrative Law Judge will conduct a hearing and render a final decision.

A Petition for a Contested Case Hearing must be filed within **30 calendar days** after the grievant receives the FAD. The grievant may file the appeal at:

Office of Administrative Hearings
1711 New Hope Church Road (Physical Address)
6714 Mail Service Center (mailing Address)
Raleigh, NC 27699-6714
919-431-3000

Hearing procedure requirements and filing form (OAH Form H06A) can be obtained from the Office of Administrative Hearings at: <http://www.ncoah.com/hearings/> or by calling 919-431-3000. The Office of Administrative Hearings charges a \$20.00 filing fee for each petition filed. Please contact their office to obtain information regarding the accepted forms of payment.

A copy of the petition for a contested case hearing must also be **served** on the NC Department of Transportation by personal delivery, or by certified or registered mail, return receipt requested to:

Sarah Mitchell
Process Agent
NC Department of Transportation
1 S. Wilmington Street
1501 Mail Service Center
Raleigh NC 27699-1501

VI. GRIEVANCE POLICY PROVISIONS

No Threat of Reprisal

All eligible employees have the right to pursue a complaint or grievance without threat of reprisal and/or intimidation. Any supervisor or staff member issuing threats of reprisal or intimidation shall be subject to disciplinary action for unacceptable personal conduct.

Administrative Leave and Expense Reimbursement

1. Grievants will be allowed up to a total of eight (8) hours of administrative leave to prepare for an Employee Relations Committee hearing.
2. Grievants and employees required to attend a hearing shall be granted administrative leave for the time spent in the hearing.
3. All employees, except grievants, who are required to attend a hearing, shall be granted per diem costs for lodging, meals and transportation expenses in accordance with Departmental procedures set forth in the NCDOT Field Fiscal Procedure Manual.
4. Grievants **who prevail** in a hearing shall be reimbursed for all expenses, including per diem cost for lodging, meals and transportation, in accordance with the NCDOT Field Fiscal Procedures Manual.

Access to Information

Management shall cooperate with the grievant's request for access to information in his/her personnel file as provided by N.C.G.S. 126-24 and to other relevant public records and shall respond to **reasonable** requests for copies of such documents. The NC Human Resources Director or appropriate designee shall rule upon the reasonableness of all such requests. The Personnel Tech for each division, branch, section or unit is the custodian of the personnel files. Employees shall be entitled to view and copy their own personnel files during normal business hours upon reasonable advance written notice to the custodian.

NCDOT Human Resources Responsibilities

The NCDOT Human Resources Office is responsible for:

1. Ensuring adherence to the Employee Grievance Policy as adopted by the NC Human Resources Commission;
2. Developing and communicating internal procedures as needed;
3. Providing current employees and new hires with access to the Employee Grievance and Procedures;
4. Notifying all employees of any changes to the Employee Grievance Policy and Procedures no later than **30 calendar days** prior to the effective date of the change;
5. Entering and maintaining all grievance data by the last business day of each month in the State's HR/Payroll system; and
6. Submitting employee grievance data to OSHR in accordance with OSHR instructions upon request.

Miscellaneous Provisions

1. No appeal rights are provided in the NCDOT grievance and appeal procedures for any written warnings, counseling sessions or supervisory conferences.
2. No appeal rights are provided in the NCDOT grievance and appeal procedure for denial of promotion based on qualifications.
3. Lateral transfers made by management are not grievable, unless the grievant is transferred more than 35 miles from his/her workstation. If the transfer results in less than 35 miles from the home/residence, there are no appeal rights.
4. Any employee who voluntarily resigns from employment with the NCDOT with or without notice has no appeal rights.
5. Matters of inherent management decisions are not subject to appeal under this policy. These matters include, but are not limited to, such areas as the programs and functions of the department, standards of service, the overall agency budget, the utilization of technology, and assignment and reassignment of staff positions, duty stations and shifts, except where such transfers include a demotion to a lower classification or a transfer of more than 35 miles from the employee's previous workstation.
6. Reduction in Force appeal rights are defined in the NCDOT Reduction in Force Policy.
7. Complaints involving unlawful workplace harassment are defined in the Unlawful Workplace Harassment policy.
8. Appeal rights and a copy of the NCDOT grievance Procedure overview must be included in a letter of dismissal, demotion or suspension without pay.
9. The NCDOT Grievance Policy and Procedures will be posted at all NCDOT facilities to ensure all employees have access to the policy and procedures.
10. Employees with questions should contact the Employee Relations representative assigned to their division or unit.