



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM
Dr. R. Scott Ralls, President

REPLY TO:
Q. Shanté Martin, *General Counsel*
PHONE: 919-807-6961
FAX: 919-807-7171
EMAIL: martins@nccommunitycolleges.edu

January 5, 2010

IMPORTANT ADMINISTRATIVE CODE INFORMATION

MEMORANDUM

TO: Members of the State Board of Community Colleges
Community College Presidents and Boards of Trustees Chairs
NC Community College System Office Staff
Other Interested Parties

FROM: Q. Shanté Martin
General Counsel

SUBJECT: **FLEXIBLE FURLOUGH TIME - 23 N.C.A.C. 02C .0212 OF THE
NORTH CAROLINA ADMINISTRATIVE CODE,
EXPIRATION EFFECTIVE JANUARY 1, 2010**

The emergency rule 23 N.C.A.C. 02C .0212, entitled “Flexible Furlough Time,” has expired effective January 1, 2010. The State Board of Community Colleges previously adopted this section of the code as an emergency rule to comply with Governor Perdue’s Executive Order 11 and to comply with Session Law 2009-26.

For your convenience, copies of this rule, Executive Order 11, and Session Law 2009-26 are attached to this memorandum. Please be sure to share this change in the Administrative Code with all those affected. If there are questions, please do not hesitate to ask.

CC10 – 001
E-mail Copy

Attachments

23 NCAC 02C.0212 FLEXIBLE FURLOUGH TIME

Each local board of trustees shall have the discretion to establish the times community college employees will be furloughed in accordance with Executive Order Number 11 issued April 28, 2009. The furlough shall not impact longevity pay, payouts for unused leave, service credit, or health and retirement benefits. This section shall be effective for the duration of Executive Order Number 11 issued April 28, 2009.

*History Note: Authority G.S. 115D-5;
Emergency Adoption Eff. June 3, 2009 to expire on January 1, 2010 (see S.L. 2009-26).*

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 11

ESTABLISHING AND IMPLEMENTING A FLEXIBLE FURLOUGH PLAN FOR THE 2008-09 FISCAL YEAR

WHEREAS, North Carolina's citizens and businesses are suffering from the effects of a significant national financial crisis; and

WHEREAS, this crisis has resulted in a large reduction in the revenues projected to be available to fund the State's Budget for the 2008-09 fiscal year; and

WHEREAS, in anticipation of the need to take actions to ensure that budget shortfalls would not cause expenditures to exceed revenues for the 2008-09 fiscal year, I adopted an Executive Order on my third day in office directing the Office of State Budget and Management (OSBM) to take various actions to ensure that the budget is balanced for this fiscal year; and

WHEREAS, the Department of Revenue has now calculated the revenues that will be available to the State for the remainder of this fiscal year from the taxes paid by citizens and businesses through April 15, 2009, and the Department of Revenue and OSBM have now determined that expenditures for the 2008-09 fiscal year will exceed revenues unless additional actions are taken; and

WHEREAS, it is my duty under the Constitution to ensure that the State's budget for the 2008-09 fiscal year is balanced; and

WHEREAS, the Constitution grants me the power to fulfill this duty by effecting necessary economies in state expenditures; and

WHEREAS, I must exercise this power in a manner that carefully balances the rights of citizens and businesses to government services and the interests of the State employees who provide those services; and

WHEREAS, I have determined that one of the actions I must take to balance the State's budget for this fiscal year is to implement a flexible furlough plan for all State employees.

NOW, THEREFORE, pursuant to the powers conferred on me by Article III, Section 5(3) of the North Carolina Constitution, **IT IS HEREBY ORDERED:**

1. The Office of State Budget and Management (OSBM) shall immediately implement a Flexible Furlough Plan. Except as provided in Section 2 of this Executive Order, this Plan will apply to all persons employed in the Executive, Judicial, and Legislative Branches of State Government and all employees of the public schools, community colleges, and universities whose salaries are paid in whole or in part from moneys appropriated by the 2008 Appropriations Act. Under this plan,
 - (a) the part of the annualized base salaries of all covered employees paid from moneys appropriated by the 2008 Appropriations Act will be reduced by .5 percent ($\frac{1}{2}\%$) over the remainder of this fiscal year; and
 - (b) all full-time employees whose salaries are reduced pursuant to subsection (a) shall be furloughed for 10 hours without pay at times to be designated by their employing agency between June 1 and December 31, 2009, and all employees employed less than full-time whose salaries are reduced pursuant to subsection (a) shall be furloughed a pro-rated number of hours.
2. This Plan does not apply to those State officers whose salaries are protected from reduction by Article III, Section 9 and Article IV, Section 21 of the Constitution, but I urge those officers to participate in this plan voluntarily. Further, I hereby direct OSBM to reduce my annual salary by .5 percent prior to the end of the fiscal year.
3. The State Board of Education, the State Board of Community Colleges, the Board of Governors of the University of North Carolina, and all agencies within the Executive Branch of State Government shall cooperate with OSBM in the implementation of the salary reduction part of this plan.
4. The Office of State Personnel will, as soon as practicable, develop guidelines to be used by agencies and institutions within the Executive Branch in designating the times employees will be furloughed. Likewise, the State Board of Education will adopt rules to be applied by local boards of education in designating the times public school employees will be furloughed; the State Board of Community Colleges will adopt rules to be applied by boards of trustees of community colleges in designating the times community college employees will be furloughed; and the Board of Governors of the University of North Carolina will adopt rules to be applied in designating the times EPA university employees will be furloughed. The guiding principle in adopting and implementing these rules will be avoidance of interruptions in services to citizens and businesses. I respectfully request that the Legislative and Judicial Branches of State Government also adopt rules designating the times their employees will be furloughed.
5. Finally, I urge the General Assembly immediately to enact legislation holding employees harmless for this salary reduction in the calculation of their retirement benefits, vacation, and sick leave, and in determining their eligibility for health insurance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-eighth day of April in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



Beverly Eaves Perdue
Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Elaine F. Marshall *by and through*
Secretary of State *Rochey Malhe*
Chief Deputy Secretary

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-26
HOUSE BILL 917**

AN ACT TO MAKE THE EFFECT OF EXECUTIVE ORDER NUMBER ELEVEN
APPLICABLE TO THE LEGISLATIVE AND JUDICIAL BRANCHES AND TO
PROTECT STATE EMPLOYEES UNDER THAT ORDER.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Findings. – The General Assembly finds that:

- (1) North Carolina's citizens and businesses are suffering from the effects of a significant national financial crisis.
- (2) The financial crisis has resulted in large reductions in revenues projected to be available to fund the State's budget for the 2008-2009 fiscal year.
- (3) The Department of Revenue has calculated the revenues that will be available to the State for the remainder of the 2008-2009 fiscal year from the taxes paid by citizens and businesses through April 15, 2009, and the Department of Revenue and the Office of State Budget and Management have determined that expenditures for the 2008-2009 fiscal year will exceed revenues unless additional actions are taken.
- (4) Under the State Constitution, it is the duty of the Governor to ensure that the State's budget for the 2008-2009 fiscal year is balanced in a manner that carefully balances the rights of citizens and businesses to government services and the interests of State employees who provide those services.
- (5) The Governor has issued Executive Order No. 11 reducing pay and compensating employees with flexible leave.
- (6) The implementation of temporary nondisciplinary reductions in pay and flexible leave was and is necessary to balance the State's budget for the 2008-2009 fiscal year.
- (7) Many legislators and judges have voluntarily waived a portion of their pay in advance of the passage of legislation implementing Executive Order No. 11.

SECTION 1.(b) Definitions. – The following definitions apply in this act:

- (1) Compensation. – Base rate of compensation, not including pay for shift premiums, overtime, longevity, or other types of extraordinary pay.
- (2) Flexible leave. – A temporary period of leave from employment with pay taken before December 31, 2009.
- (3) Public employee. – Any person employed (i) by a State agency, department, or institution, (ii) by The University of North Carolina, (iii) by the North Carolina Community College System, or (iv) by a local school administrative unit. The term includes public officers.
- (4) Nondisciplinary reduction in pay. – A temporary reduction in compensation paid to a public employee that is (i) related to an executive order issued by the Governor during the 2008-2009 fiscal year and (ii) not made in connection with a demotion or any other disciplinary action.
- (5) Public agency. – Any State agency, department, or institution; The University of North Carolina; the North Carolina Community College System; and local school administrative units.

SECTION 2. Compensation and Benefits. – A public employee subject to a nondisciplinary reduction in pay shall not suffer any diminution of retirement average final compensation, which shall continue to be calculated based on the undiminished compensation. The public agency shall pay both the employee and employer contributions to the Retirement



Systems Division or to the appropriate Optional Retirement Plan carrier on behalf of the public employee as to the amount that compensation was reduced.

SECTION 3. The nondisciplinary reduction in pay and flexible leave do not apply to those justices, judges, and officers whose salaries are protected from reduction by Article III, Section 9 and Article IV, Section 21 of the North Carolina Constitution. Constitutionally exempt persons are encouraged to participate in the pay reduction described in this act by donating to the State at least the amount of their compensation that would be reduced if the persons were not exempt.

SECTION 4.(a) The State Board of Education, the State Board of Community Colleges, the Board of Governors of The University of North Carolina, local school administrative units, and all State agencies within the executive branch of State government shall cooperate with the Office of State Budget and Management in the implementation of the nondisciplinary reductions in pay.

SECTION 4.(b) The Office of State Personnel shall, as soon as practicable, develop guidelines to be used by State agencies, departments, and institutions within the executive branch in designating the times subject employees will be subject to flexible leave. The State Board of Education shall adopt rules to be applied by local boards of education in designating the times public school employees will be subject to flexible leave. The State Board of Community Colleges shall adopt rules to be applied by boards of trustees of community colleges in designating the times community college employees will be subject to flexible leave. The Board of Governors of The University of North Carolina shall adopt rules to be applied in designating the times university employees will be subject to flexible leave. The rules adopted shall avoid interruptions in services to citizens and businesses.

SECTION 5.(a) Employees of the legislative branch and the judicial branch are subject to reductions in pay to the same extent as if the employees were covered by the executive order. Members and officers of the General Assembly are subject to reductions in pay to the same extent as if the members and officers were covered by the executive order. Officers of the Judicial Branch whose salaries are not protected from reduction by Article IV, Section 21 of the North Carolina Constitution are subject to reductions in pay to the same extent as if the officers were covered by the executive order.

SECTION 5.(b) The Legislative Services Commission shall implement a flexible leave program for members and employees of the General Assembly. The flexible leave program must be substantially equivalent to the program established by the State Personnel Commission.

SECTION 5.(c) Judicial Branch. – Upon a written determination by the Chief Justice that flexible leave of judicial employees is necessary to implement the executive order, the Chief Justice shall implement a flexible leave program for employees of the Judicial Department. The flexible leave program must be substantially equivalent to the program established by the State Personnel Commission.

SECTION 6. Rule Making. – As soon as practicable, and no more than 10 calendar days from the effective date of this act, the Office of State Budget and Management, the State Personnel Commission, the State Board of Community Colleges, the State Board of Education, and The University of North Carolina shall adopt emergency rules for the implementation of the executive order and this act in accordance with G.S. 150B-21.1A, except that notwithstanding G.S. 150B-21.1A(d), those emergency rules may remain in effect until the expiration of this section. This section does not require any rule making if not otherwise required by law.

SECTION 7. A nondisciplinary reduction in pay as provided in the executive order as implemented by this act does not constitute a demotion under Part 3 of Article 22 of Chapter 115C of the General Statutes or under any other personnel law or policy.

SECTION 8. Notwithstanding G.S. 115C-302.1(h), 115C-316(b), 115C-285(b), 115C-273, or any other provision of law, employees of local boards of education who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event of a reduction in compensation of State-paid employees that is enacted by the General Assembly or ordered by the Governor pursuant to the Governor's constitutional duty to balance the State budget.

SECTION 9. Effective Date. – This act is effective when it becomes law. Section 5(a) of this act shall not apply to legislators who have voluntarily waived the same proportion of their pay as would be affected by Section 5(a) of this act by execution of a voluntary waiver

of legislative pay after the issuance of Executive Order No. 11, but before this act becomes law; provided the voluntary waiver remains in effect through June 30, 2009. This act expires January 1, 2010.

In the General Assembly read three times and ratified this the 14th day of May, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 9:56 a.m. this 18th day of May, 2009