



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

2 June 2011

IMPORTANT INFORMATION

MEMORANDUM

TO: Members of the State Board of Community Colleges
NC Community College System Office
Community College Presidents
Community College Personnel Officers
Community College Attorneys
Other Interested Parties

FROM: Q. Shanté Martin, General Counsel

RE: **CONTINUED HEALTHCARE BENEFITS TO COMMUNITY COLLEGE
CONTRACT EMPLOYEES**

N.C.G.S. § 135-45.2(a)(8) (2009) as amended by S.L. 2010-136, sec. 1 provides the following:

Notwithstanding the provisions of G.S. 135-45.12 employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit, or who have completed a contract term of employment of 10 or 11 months and whose employing unit is a local school administrative unit, and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination.

On behalf of community colleges, the North Carolina Community College System requested an Attorney General's opinion on the following inquiry:

Does N.C.G.S. § 135-45.2(a)(8) (2009) require community colleges to pay continued healthcare benefits to community college contract employees whose contracts have expired?

CC11-012
E-mail Copy



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

Dr. R. Scott Ralls, President

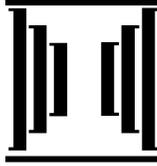
The Attorney General's advisory letter provided that "contract community college employees do not qualify for continued non-contributory coverage under the North Carolina State Health Plan." As such, community colleges are not required to pay continued healthcare coverage benefits under N.C.G.S. § 135-45.2(a)(8) to community college contract employees whose contract expires. Please review the attached letter requesting an opinion and the response by the Attorney General's Office for more information.

QSM/caa

Attachments

4 April 2011 Request for AG's Opinion
25 May 2011 AG Advisory Letter

CC11-012
E-mail Copy



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

REPLY TO:

Q. Shanté Martin, *General Counsel*

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FAX: 919-807-7171

EMAIL: martins@nccommunitycolleges.edu

4 April 2011

Grayson Kelley
Chief Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

Dear Mr. Kelley:

On behalf of the North Carolina Community College System (NCCCS), I request an Attorney General's opinion on the following inquiry:

Does N.C.G.S. § 135-45.2(a)(8) (2009) require community colleges to pay continued healthcare benefits to community college contract employees whose contracts have expired?

Several community college employees have employees who are at-will and have employees with fixed-term employment contracts. When fixed term employment contracts expire, the community college and the contract employee have the right to end the contractual relationship. The issue is whether the community college has a continuing obligation to provide healthcare benefits to the contract employee after the expiration of the contract pursuant to N.C.G.S. § 135-45.2(a)(8). N.C.G.S. § 135-45.2(a)(8) as amended by S.L. 2010-136, sec. 1 provides the following:

Notwithstanding the provisions of G.S. 135-45.12 employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit, *or who have completed a contract term of employment of 10 or 11 months and whose employing unit is a local school administrative unit*, and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination.

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AN EQUAL OPPORTUNITY EMPLOYER

(Emphasis added).

Effective 1 May 2010, the General Assembly amended N.C.G.S. § 135-45.2(a)(8) to add local school administrative unit contract employees employed for 10 or 11 months to the group of individuals entitled to receive the additional 12 months of healthcare benefits. *See* S.L. 2010-136, sec. 1. Particularly in light of the 1 May 2010 amendment, it is NCCCS' position that N.C.G.S. § 135-45.2(a)(8) does not apply to community college contract employees whose contracts expire. To explain NCCCS' position, it is helpful to dissect the provisions within N.C.G.S. § 135-45.2(a)(8). As such, I offer the following information for your consideration.

To be eligible for continuing healthcare coverage pursuant to N.C.G.S. § 135-45.2(a)(8), a former employee that has not retired must satisfy the following conditions:

- 1) Be formerly covered under the North Carolina State Health Plan for Teachers and State Employees;

AND

- 2) a. Have been employed for 12 or more months by a "North Carolina School System; Community College; State Department, Agency, or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System, *see* N.C.G.S. § 135-45.1(12) (2009); or
- b. Have completed a contract term of employment of 10 or 11 months with an employing unit that is a local school administrative unit;

AND

- 3) Be an employee whose job was eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities;

AND

- 4) Be covered by the State Health Plan for Teachers and State Employees at the time of separation from service resulting from a job elimination.

Community college contract employees who were formerly covered by the State Health Plan are not able to satisfy all of the conditions required to show eligibility for continued healthcare coverage under N.C.G.S. § 135-45.2(a)(8).

I. Community college employees could be “employees formerly covered by the provisions of this section [describing eligibility for coverage under the North Carolina State Health Plan for Teachers and State Employees].”

Community college employees are eligible for coverage under the North Carolina State Health Plan for Teachers and State Employees pursuant to N.C.G.S. § 115D-22 (2009). Therefore, when N.C.G.S. § 135-45.2(a)(8) references “employees formerly covered by the provisions of this section [describing eligibility for coverage under the North Carolina State Health Plan for Teachers and State Employees,]” community college employees who were formerly covered by the North Carolina State Health Plan for Teachers and State Employees would be included.

II. Community college contract employees could be “employed for 12 or more months by an employing unit.”

The applicability of N.C.G.S. § 135-45.2(a)(8) to community college employees is also dependent upon community college employees being employed for 12 or more months and is dependent upon North Carolina community colleges being “employing units” as defined in N.C.G.S. § 135-45.1(12) (2009). It is common for community college contract employees to have nine-month contracts with three-month supplemental contracts and then have their nine-month contract and three-month supplemental contract renewed such that they are continuously employed for 12 months or longer. *See, e.g.,* S.L. 2001-424, s. 30.6 (“All [community college] faculty members employed after the date this act becomes law shall be placed on nine-month contracts with supplemental contracts for the summer term.”). Additionally, N.C.G.S. § 135-45.1(12) provides in part that an employing unit is a “Community College . . . whose employees are eligible for membership in a State-Supported Retirement System.” North Carolina community college employees are “eligible for membership in a State-Supported Retirement System” pursuant to N.C.G.S. § 115D-22. As such, North Carolina community colleges are employing units under N.C.G.S. § 135-45.2(a)(8).

III. Community college employees generally do not complete “a contract term of employment of 10 or 11 months.”

As an alternative to being employed for 12 or more months, former employees who could be subject to N.C.G.S. § 135-45.2(a)(8) could “have completed a contract term of employment of 10 or 11 months.” However, community college employees generally do not have a “contract term of employment of 10 or 11 months.” Community college contract employees generally have a contract term of employment of nine months. *See* S.L. 2001-424, s. 30.6 (“All [community college] faculty members employed after the date this act becomes law shall be placed on nine-month contracts with supplemental contracts for the summer term.”). As such, community college faculty have nine-month contracts, and many other community college employees also have nine-month employment contracts. Thus, community college employees would not be able to satisfy

the alternative to being employed for 12 or more months because they generally do not complete contracts of 10 or 11 months.

IV. Community colleges are not “local school administrative units”

As an alternative to establishing employment for 12 months, a former contract employee has the opportunity to show that the contract employee had an employment contract for a term of 10 or 11 months and that the employment relationship was with a local school administrative unit. *See* N.C.G.S. § 135-45.2(a)(8).

To determine whether community college contract employees are employed by a “local administrative unit,” it is necessary to define “local school administrative unit” as used for the purpose of Chapter 135 of the North Carolina General Statutes. The legislature does not define “local school administrative unit” in Chapter 135, and the only definition for “local school administrative unit” in the General Statutes is in the elementary and secondary school statute - Chapter 115C of the North Carolina General Statutes. Chapter 115C defines a “local school administrative unit” as “a subdivision of the public school system which is governed by a local board of education. It may be a city school administrative unit, a county school administrative unit, or a city-county school administrative unit.” N.C.G.S. § 115C-5(6) (2009). Applying this definition to the phrase “local school administrative unit” in the amendment in N.C.G.S. § 135-45.2(a)(8), a community college is not a subdivision of the public school system governed by a local board of education. A community college is “an educational institution operating under the provisions of [Chapter 115D][,]” N.C.G.S. §§ 115D-2(2) (2009), and governed by policies adopted by the State Board of Community Colleges and by local boards of trustees, not local boards of education. *See* N.C.G.S. § 115D-5(a); N.C.G.S. § 115D-12(a). As such, a community college is not a local school administrative unit for the purposes of N.C.G.S. § 135-45.2(a)(8).

By limiting the applicability of the continued health insurance coverage in contract situations to contract employees employed by “local school administrative units,” the legislature expressly did not include community colleges as an employing unit from whom a contract worker is entitled to receive continued health coverage. If the legislature intended to include all educational institutions with employment contracts, it could have used the phrase “and whose employing unit is an educational institution” rather than “and whose employing unit is a local school administrative unit” since “educational institution” is more broad than the limiting phrase, “local school administrative unit.”

V. Former community college contract employees are not employees whose job was eliminated because of a reduction.

To be eligible for continuing healthcare coverage pursuant to N.C.G.S. § 135-45.2(a)(8), a former employee must additionally have had his or her job eliminated because of a reduction . . . in the funds used to support the job. A contract employee whose contract expires has not had his or her job eliminated because of a reduction. The

contract employee's job ended based upon the mutually agreed contract expiration date. A contract employee does not have a legitimate expectation of continued employment past the ending date of his contract. *See Mills v. Steger*, 64 Fed. Appx. 864, 869 (4th Cir. 2003) (“[H]e worked under an employment contract that was subject to annual renewal. Mills therefore did not have a protected interest in remaining at Virginia Tech past the ending date of his contract.”) Thus, while former community college employees may have been covered by the State Health Plan at the time the employee's contract expired, for the reasons delineated above, former community college contract employees did not separate from service resulting from a job elimination. Again, the contract employee's job ended based upon the mutually agreed expiration of the contract.

In sum, because community colleges are not “local school administrative units” and because community college contract employees who mutually agree to a contract expiration date are not subject to a job elimination because of a reduction, community college contract employees do not satisfy all of the prerequisites for continued healthcare coverage pursuant to N.C.G.S. § 135-45.2(a)(8). Therefore, NCCCS' position is that community colleges are not required to provide continued healthcare coverage to community college contract employees whose contracts expire. NCCCS respectfully requests an Attorney General's opinion on whether N.C.G.S. § 135-45.2(a)(8) requires community colleges to pay continued healthcare coverage to community college contract employees whose contract has expired.

Sincerely,

Q. Shanté Martin
General Counsel

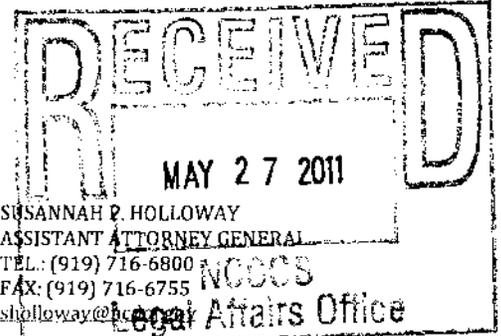
Cc: Tom Ziko, *Senior Deputy Attorney General*
R. Scott Ralls, *President*



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

ROY COOPER
ATTORNEY GENERAL



May 25, 2011

Ms. Q. Shante Martin
General Counsel
North Carolina Community College System
5004 Mail Service Center
Raleigh, N.C. 27699-5004

Re: Request for an Advisory Letter Concerning N.C. Gen. Stat. § 135-45.2

Dear Ms. Martin:

This is in response to your inquiry dated April 4, 2011. You have asked our opinion concerning:

Whether N.C.G.S. 135-45.2(a)(8) (2009) requires community colleges to pay continued healthcare benefits to community college contract employees whose contracts have expired?

Answer: No. The conclusion you reached in your April 4, 2011 letter is correct; contract community college employees do not qualify for continued non-contributory coverage under the North Carolina State Health Plan. You are also correct, for the reasons stated in your letter dated April 4, 2011, that community colleges are not local school administrative units.

The facts presented are as follows: The community colleges have some employees who are employed under fixed-term contracts generally for a period of nine to twelve months. The contracts expire based on their agreed upon terms. It is common for community college contract employees to have nine-month contracts with a three-month supplemental contract renewed such that they are continuously employed for 12 months or longer.

N.C.G.S. § 135-45.2 states in pertinent part:

(a) Noncontributory Coverage. -- The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-45.4:

(1) All permanent full-time employees of an employing unit who meet the following conditions:

- a. Paid from general or special State funds, or
- b. Paid from non-State funds and in a group for which his or her employing unit has agreed to provide coverage.

Employees of State agencies, departments, institutions, boards, and commissions not otherwise covered by the Plan who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(2) Permanent hourly employees as defined in G.S. 126-5(c4) who work at least one-half of the workdays of each pay period.

....

(8) Notwithstanding the provisions of G.S. 135-45.12 employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit, or who have completed a contract term of employment of 10 or 11 months and whose employing unit is a local school administrative unit, and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination. An employee formerly covered by the provisions of this section shall not be eligible for coverage under this subdivision if the employee is provided health benefit coverage on a non-contributory basis by a subsequent employer. . . .

N.C. Gen. Stat. § 135-45.12 states in pertinent part:

(a) Coverage under this Plan of an employee and his or her surviving spouse or eligible dependent children or of a retired employee and his or her surviving spouse or eligible dependent children shall cease on the earliest of the following dates:

....

(2) The last day of the month in which an employee's employment with the State is terminated as provided in subsection (c) of this section.

....

(d) Termination of employment shall mean termination for any reason, including layoff and leave of absence, except as provided in subdivisions (a)(1) and (2) of this section, but shall not, for purposes of this Plan, include retirement upon which the employee is granted an immediate service or disability pension under and pursuant to a State-supported Retirement System. . . .

Because the contract employees at issue have terminated service with the community colleges due to the expiration of their contract terms, and not due to an elimination of their job because of a reduction in the funds used to support the job, they are not entitled to the 12 months of continued non-contributory coverage under the statute.

I trust this adequately addresses your inquiry. This is an advisory letter. It has not been reviewed and approved in accordance with the procedures for issuing a formal Attorney General's opinion. If you should have further questions regarding this, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susannah P. Holloway".

Susannah P. Holloway
Assistant Attorney General