The General Assembly’s 1998 session produced few significant changes in North Carolina’s laws regarding state and local government employees. The two issues that received the most public attention were the apparent inadequacy of the State Personnel Act in addressing sexual harassment of state employees and the amount of pay raises for state employees.

**State Employees**

**Salary Increases**

As the legislature’s “short” session stretched into late September without the enactment of a revised state budget, the General Assembly came under increasing pressure to enact legislation increasing the salaries of teachers and state employees. In an unusual move, the legislature enacted salary increases by separate legislation rather than as part of the budget bill.

S.L. 1998-153 (S 879) enacted a teacher salary schedule that increased salaries, on average, by 6.5 percent. State employees received a more modest increase of 3 percent, plus a one-time bonus payment of 1 percent. The actual allocation of the pay increase, consistent with the requirements of G.S. 126-7 and the rules adopted by the State Personnel Commission, was a career growth recognition award of 2 percent, a cost-of-living adjustment of 1 percent, and a performance bonus of 1 percent.

S.L. 1998-153 also increased the salaries for the Governor and the Council of State. The Governor’s salary was increased from $107,132 to $110,346 per year. The annual salaries for members of the Council of State were increased from $94,552 to $97,388. Appointed state agency heads had their annual salaries increased from $92,378 to $95,149. Other executive branch officials also received salary increases of 3 percent, as did judicial branch officials and employees of the General Assembly and the Community College system. EPA nonfaculty employees of The University of North Carolina also received a 3 percent increase.

In addition, S.L. 1998-153 provided a 2.5 percent retirement allowance increase for beneficiaries under state retirement systems and adjusted the employer contribution rates for the state retirement systems.

Section 28.18(a) of S.L. 1998-212 amended G.S. 97-78 to establish the salaries of the administrator and the executive secretary of the Industrial Commission by statute. The salary of the administrator will be 90 percent of the salary of a commissioner. The salary of the executive secretary will be 80 percent of the salary of a commissioner. In lieu of merit and other incremental raises, the administrator and the executive secretary will receive longevity pay on the same basis as is provided to other employees subject to the State Personnel Act.

Section 28.16B of S.L. 1998-212 amended the State Personnel Act, G.S. 126-7(c)(4b), to permit an employee whose performance is rated at or above level two of the rating scale and who has not received a suspension without pay or demotion that has not been resolved (i.e., whose grievance contesting the rating is still pending) to receive cost-of-living increases. The same section deletes a provision enacted by S.L. 1998-153, which barred pay increases to employees who were involved in final written disciplinary procedures. The net effect of this change is to require the state to give pay increases to employees who are on probation, or even on final written warning, for poor performance. Representative Cary Allred (R-Alamance), at whose request this provision was inserted, claimed that it was necessary to counter political retaliation against state employees.

Section 28.19(a) of S.L. 1998-212 amended G.S. 143-246 to provide that the salary of the Wildlife Resources Commission Director will be an amount at least equal to the salary of the Director of the Division of Marine Fisheries.

**Sexual Harassment Claims under the State Personnel Act**

Since 1971, the State Personnel Act has provided a means of redressing discrimination claims for state and county employees covered by the act. G.S. 126-16 states:

All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration.

The statute also establishes an appeal process for an employee alleging discrimination: an initial hearing within the employee’s agency followed by a hearing before the State Personnel Commission.

In May 1998, the State Personnel Commission ruled, in a case involving sexual harassment of a Department of Correction employee, that the statute did not provide any relief for an employee who had been harassed. Pamela Robinson v. N.C. Department of Correction, Case Nos. 96 OSP 0403 and 96 OSP 0654 (May 11, 1998). Even though the employee proved that her boss propositioned her, repeatedly brushed up against her, and made sexually suggestive comments to her, the State Personnel Commission concluded that nothing in the State Personnel Act specifically prohibited such conduct. The Commission’s ruling was reported in the Raleigh News & Observer and the Charlotte Observer and in the electronic media.

The General Assembly, responding to media and public outcry, passed S.L. 1998-135 (S 78), which amends the State Personnel Act to reverse the State Personnel Commission’s ruling in the Robinson case. As amended by S.L. 1998-135, G.S. 126-34 now provides:

Unless otherwise provided in this Chapter, any career State employee having a grievance arising out of or due to the employee’s employment and who does not allege unlawful harassment or discrimination because of the employee’s age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss the problem or grievance with the employee’s supervisor and follow the grievance procedure established by the employee’s department or agency. Any State employee having a grievance arising out of or due to the employee’s employment who alleges unlawful harassment because of the
employee’s age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by G.S. 168A-3 shall submit a written complaint to the employee’s department or agency. The department or agency shall have 60 days within which to take appropriate remedial action. If the employee is not satisfied with the department or agency’s response to the complaint, the employee shall have the right to appeal directly to the State Personnel Commission.

S.L. 1998-135 also enacted a new section, G.S. 126-34.1(a)(10), which provides relief from “harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.” Thus, the General Assembly strengthened the discrimination protection available to covered employees.

The effect of this new legislation is to mirror the protection provided to employees by Title VII of the Civil Rights Act of 1964 against sexual harassment. Given the fact that state employees are covered by both statutes, however, it may be the case that the federal law continues to provide the remedy of choice and that there will be no significant increase in the number of sexual harassment claims brought exclusively under the State Personnel Act.

**Partial Exemption of UNC and ECU Hospital Employees from the State Personnel Act**

As health care delivery becomes more competitive, public hospitals in North Carolina and elsewhere have sought ways to remain in the marketplace with their private sector counterparts. In an effort to improve the competitive capacity of the University of North Carolina (UNC) Hospitals, the General Assembly enacted Section 11.8 of S.L. 1998-212 (S 1366). This section makes extensive changes to the governance structure for the UNC Hospitals, creating the University of North Carolina Health Care System. In addition to creating a new board of directors and executive structure, the section makes employees of the new entity, who had previously enjoyed the full protection of the State Personnel Act (SPA), subject to only certain provisions of the SPA. Specifically, after November 1, 1998, only Articles 5 (political activity of employees), 6 (equal employment opportunity), 7 (privacy of employee personnel records), and 14 (“whistleblower” protection against retaliation for reporting fraud or mismanagement) of the SPA apply to employees of the new UNC Health Care System.

The provisions of the SPA that no longer apply to UNC Health Care System employees include the articles governing salaries, promotion, leave, grievances, and disciplinary action. In addition, these employees are no longer subject to the rulemaking authority of the State Personnel Commission. Instead, S.L. 1998-212 gives the board of directors of the UNC Health Care System the authority to establish compensation and position classification plans for the employees and to adopt rules governing leave, workers’ compensation, working conditions, service and incentive awards, discipline and discharge, grievances, and any other matters. Employees who had achieved career state employee status by October 31, 1998, are protected against salary reduction. The 1998 law also gives the board the authority to prescribe hours or work and holidays and to create employee grievance appeal boards. The policies adopted by the board must be submitted to the Office of State Personnel for review, but the scope of that review is unclear from the legislation.

What policies will be adopted by the board of directors remains to be seen. It is noteworthy, however, that the 1998 law does not require those policies to provide the same level of job security or benefits that the employees previously enjoyed under the State Personnel Act.

S.L. 1998-212 makes substantially identical changes with respect to employees of the Medical Faculty Practice Plan of the School of Medicine of East Carolina University (ECU).

**Employment Rights of RIF’d Employees**

Section 28.28(a) of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), limits the rights of employees who lose their jobs due to a reduction in force (RIF). An employee who is RIF’d will
be given severance wages based on his or her last annual salary, unless the employee was promoted within the last twelve months before the RIF. In that case, severance wages will be based on the employee’s salary prior to the promotion, adjusted to account for any across-the-board legislative salary increases. Excluded from the calculation of annual salary are any benefits such as, but not limited to, overtime pay, shift pay, holiday premium, or longevity pay.

Any employee who is separated from state government and paid severance wages as a result of a RIF may not be employed under contractual arrangement by any state agency, other than the constituent institutions of The University of North Carolina and the constituent institutions of the North Carolina Community College System, until twelve months have elapsed since the separation.

**State Personnel Commission Reorganization**

S.L. 1998-181 (H 1469) amends the State Personnel Act, G.S. 126-2(b), to increase the size of the State Personnel Commission from seven to nine members. Both new members must be attorneys who are licensed to practice law in the North Carolina. One of the new members will be appointed by the Governor on the recommendation of the Speaker of the House of Representatives; the other will be appointed by the Governor on the recommendation of the Senate President Pro Tempore.

S.L. 1998-81 also amends G.S. 126-4.1 to permit the commission to make a final agency decision in a contested case brought under the Administrative Procedure Act upon the recommendation of a panel of its members appointed by the chair. Panels must consist of four members, with three panel members constituting a quorum. The commission may accept or reject the panel’s recommended disposition of personnel cases.

**Incentive Bonus Program Changes**

S.L. 1998-181 (H 1469) amends G.S. 143-345.22(a) to permit incentive bonuses of 30 percent to be paid to all current employees in a work unit, as designated by the agency head, of the employing unit of an employee whose suggestion is adopted.

**Credit for Probationary Employment with Local Government**

S.L. 1998-190 (S 1138) amended G.S. 135-4(bb) to permit members of the Teachers’ and State Employees’ Retirement System (TSERS) to purchase credit for employment in a probationary period with a unit of local government in North Carolina.

**State and Local Government Employees**

**Retirement Credit for Service as a Teacher or Employee**

S.L. 1998-71 (H 1522) amended the Local Government Employees’ Retirement System (LGERS), G.S. 128-26, to allow members of the system to purchase credit for service rendered as a part-time teacher or a state employee, which would be credited toward service under LGERS. Similarly, the act amended TSERS, G.S. 135-4, to allow a member of TSERS to purchase credit for service rendered as a local government employee, which would be credited toward service under TSERS.

**Purchase of Military Service**

S.L. 1998-214 (H 1362) amended LGERS at G.S. 128-26(j1) to provide that transferred service credits may be included in determining whether a member of LGERS may purchase
military service to count toward retirement. The act also amended G.S. 135-4(f)(7) to make the same change for TSERS members.

Increase in Retiree Death Benefit

Section 28.27(a) of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), amended G.S. 135-5(1) to increase the death benefit for retirees under TSERS from $5,000 to $6,000. An identical change was made for retirees under LGERS by amending G.S. 128-27 and for retirees under the Legislative Retirement System at G.S. 120-4.27.

Local Government Employees

Pension Benefits for Registers of Deeds

S.L. 1998-147 (S 1407) amended G.S. 161-50.4 to provide benefits under the Register of Deeds’ Supplemental Pension Fund to registers of deeds who are otherwise not eligible solely because the county in which they serve is not a participating member of the Local Government Employees’ Retirement System. The benefit is limited to registers of deeds who have completed at least ten years of creditable service as registers of deeds and have either (1) attained the age of sixty-five, (2) attained thirty years of creditable service regardless of age, or (3) attained the age of sixty with not less than twenty-five years of creditable service.

Pension Increase for Firemen and Rescue Squad Workers

Section 28.21(a) of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), amended G.S. 58-86-55 to increase the monthly pension for members of the Firemen’s and Rescue Squad Workers’ Pension Fund from $141 to $146.

Local Legislation

Laurinburg Firemen’s Supplemental Pension Fund

S.L. 1998-63 (H 1525) repealed Sections 1 through 7 of Chapter 1315 of the 1979 Session Laws, which had created a supplemental pension fund for firefighters employed by the city of Laurinburg. All funds held by the trustees of the Laurinburg Firemen’s Supplemental Retirement Fund of the city of Laurinburg will be held and administered as provided by Article 86 of G.S. Chapter 58.

Winston-Salem Firemen’s Fund

S.L. 1998-92 (H 1396) made changes to the terms of appointment for the board of trustees of the Winston-Salem Firemen’s Fund and to the terms of the payment of pensions under the fund.

Durham Police Review Board Access to Personnel Files

S.L. 1998-142 (S 1509) allows the city of Durham to disclose limited personnel information to members of the Citizen Review Board to facilitate the board’s review of police disciplinary cases. The act requires members of the board to keep confidential all information released to them that is not otherwise a matter of public record under G.S. 160A-168, the personnel records act covering municipalities.

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