

MEMORANDUM

TO: Human Resources Directors
FROM: Division of State Human Resources Director Karen Wingo
DATE: May 22, 2019
SUBJECT: Back pay and Personnel Settlements

Recently, the Division of State Human Resources has received multiple questions concerning the approval of back pay and personnel settlements for state employees. Because of these questions, and a number of unique situations which have recently occurred, I wanted to take this opportunity to clarify when approval by the State Human Resources Director and the State Fiscal Accountability Authority (SFAA) is required.

Back Pay

Section 19-718.10 of the State Human Resources Regulations grants the State Human Resources Director the authority to approve back pay when **both** of the following conditions are met:

- The back pay is the result of a reversed disciplinary action; this includes back pay following an employee's return to work from a suspension pending investigation; and
- The employee was covered by the State Employee Grievance Procedure Act at the time the action was taken.

Back pay resulting from the correction of a payroll error does not require approval from the State Human Resources Director unless the back pay is being provided in conjunction with a settlement agreement that includes a release of claims. In this case, the monetary settlement would be governed by State Human Resources Regulation 19-718.11 — Approval of Personnel Settlements.

Back pay provided to an employee not covered by the State Employee Grievance Act for a reversed disciplinary action is also governed by State Human Resources Regulation 19-718.11 — Approval of Personnel Settlements.

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Personnel Settlements

Section 19-718.11 of the State Human Resources Regulations, Approval of Personnel Settlements, delegates authority to the State Human Resources Director to review and approve human resources related personnel settlements with a monetary settlement amount of \$10,000 or less. This includes personnel settlements which do not contain a monetary settlement.

Human resources related personnel settlements with a monetary settlement amount above \$10,000 require approval from SFAA.

This regulation applies to all employees, regardless of coverage status under the State Employee Grievance Procedure Act.

Exceptions to this requirement include settlements negotiated and approved by the:

- Workers' Compensation Commission;
- South Carolina Department of Employment and Workforce;
- Equal Employment Opportunity Commission; or
- South Carolina Human Affairs Commission.

In addition, settlements paid by an agency's Foundation Funds or by the Insurance Reserve Fund (IRF) are exempted from this requirement.

Examples

The scenarios below are provided to assist in understanding when, and from whom, approval may be needed for back pay and personnel settlements. Each situation is different, however, and questions concerning specific situations should be directed to the Division of State Human Resources Alternative Dispute Resolution (ADR) Program.

Scenario 1 — Back pay

A covered employee is terminated and files a grievance. During the grievance process the agency overturns the decision to terminate the employee and the employee is returned to work and provided with back pay.

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The back pay provided to this employee must be approved by the State Human Resources Director as it resulted from a reversed disciplinary action. This is regardless of the amount of the back pay.

Scenario 2 — Personnel Settlement

A rehired retiree is suspended for two weeks for a disciplinary issue. The employee is not covered by the State Employee Grievance Procedure Act, because rehired retirees are specifically excluded from coverage.

The employee writes a letter to the agency director disputing the reason for his suspension. The agency director agrees to reduce the employee's suspension to one week as part of a settlement agreement. The employee agrees, but he has already served his suspension and has returned to work. Therefore, he will be provided back pay for one week.

While this settlement is related to back pay for a reversed disciplinary action, because the employee was not covered by the State Employee Grievance Procedure Act at the time of the disciplinary action, the back pay can only be approved as part of a personnel settlement. Assuming the amount owed to the employee for the one-week reduction in the suspension is less than \$10,000, the State Human Resources Director has the authority to review and approve this personnel settlement. If the back-pay amount exceeds \$10,000, it must be approved by SFAA.

Scenario 3 — Personnel Settlement

An employee notified their agency's human resources office that a raise that was supposed to be effective two months prior has not been reflected in their paycheck. The agency investigated and determined that the employee's salary was not properly updated in the system and, as a result, they have not received the appropriate salary for six pay periods. The agency makes the correction in the system and provides the employee back pay for the salary owed to them for the previous pay periods.

Since this back pay is the result of a payroll error, and not a reversed disciplinary action, the back pay does not require approval **unless** the employee is asked to enter into personnel settlement which includes a waiver of claims. If payment is provided as part of a personnel settlement, approval would be required by the State Human Resources Director or SFAA, depending on the amount of the back pay.

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Scenario 4 — Back pay and Personnel Settlement

A covered employee is terminated and files a grievance and appeal concerning his termination. The appeal is settled through mediation and the agency agrees to pay the employee \$15,000 in back pay and \$9,000 as a lump sum payment. The agreement includes a waiver of claims.

In this case, the State Human Resources Director has the authority to approve the back-pay request and personnel settlement. While the total amount received by the employee is \$24,000, there is no monetary limit to the amount of back pay the State Human Resources Director can approve, and the lump-sum personnel settlement is less than \$10,000.

Agencies are encouraged to contact the Division of State Human Resources ADR Program before issuing back pay to an employee related to a reversed disciplinary action or finalizing the terms of a personnel settlement. For more information contact, ADR Program Manager Heather Kever (heather.keever@admin.sc.gov or 803-896-5088) or ADR Senior Consultant Spencer Miller (spencer.miller@admin.sc.gov or 803-896-5194).