



# NORTH CAROLINA BOARD OF BARBER AND ELECTROLYSIS EXAMINERS

## Memo

TO: Board members

FROM: Dennis Seavers

DATE: October 19, 2023

**SUBJECT: Personal observance leave**

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Governor Cooper issued Executive Order 262 on June 6, 2022. The purpose of the order was to offer up to eight hours of paid leave for a day of personal observance. The leave would be for "a day of significance, including days of cultural, religious, or personal observation." The order established personal observance leave for cabinet agencies; it also made this leave available for other agencies (including the board) that wished to voluntarily adopt the leave.

An employee of the board has requested that the board adopt this leave, particularly so she can observe Juneteenth. Board member should note that Juneteenth was explicitly recognized by the executive order as an example of a day of cultural significance, and the order was adopted shortly before Juneteenth in 2022. I recommend that the board adopt this leave policy.

Leave requests would be subject to the policy established by the Office of State Human Resources, unless the board wishes to modify the policy. (I've attached a copy of the policy, as well as the executive order.) The policy should address questions or concerns that the board members may have. But in particular, board members may wonder what qualifies as a day of cultural, religious, or personal observation. As indicated on page 3, under "Arranging to Take the Day of Leave," the policy prohibits agencies from questioning "whether an employee's identification of a particular day for Personal Observance Leave is sincere and legitimate." Therefore, it will ultimately be up to an employee to determine whether a day qualifies. However, board members should also be aware that the limitation of personal observance leave to eight hours per year will prevent this leave from being abused in a way that would be injurious to the agency.

## Personal Observance Leave

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### § 1. Introduction

Executive Order No. 262 (the “Executive Order”) provides up to eight hours of fully paid leave to eligible employees for a day of personal observance to utilize on a day of significance, including days of cultural, religious, or personal observation. The Executive Order applies to Cabinet Agencies and any other state agencies that voluntarily adopt the Executive Order’s measures.

The State of North Carolina supports a work environment that fosters respect and values all people regardless of their race, color, religion, sex (including pregnancy), national origin, age, genetic information, disability, sexual orientation, gender identity and expression, or veteran or National Guard status. The Office of State Human Resources (“OSHR”) seeks opportunities to promote diversity and inclusion at all occupational levels of State government’s workforce through Equal Employment Opportunity (“EEO”) initiatives.

The State of North Carolina strives to be an employer of choice, including recruiting and retaining a diverse workforce and creating an inclusive environment. The State employs a robust and diverse workforce, reflecting the multiple cultural and religious communities of our State. Because of the diversity of State employees, there are many different days of cultural or religious significance in our workforce. Moreover, some employees may have days of personal significance that are their own, outside of any cultural or religious tradition. The Participating Agencies that have joined this Policy seek to ensure that employees have an opportunity to observe these days of personal, cultural, or religious importance.

As authorized by Section 1 of the Executive Order, this Policy establishes further details to implement the Personal Observance Leave provided under the Executive Order. This Policy may be amended in the future.

**§ 2. Definitions**

Cabinet Agencies — Those agencies that are part of the Governor’s Office or are headed by members of the Governor’s Cabinet.

Executive Order — Executive Order No. 262.

Participating Agency — A state agency, commission, board, or office which provides paid leave under this Policy for eligible employees. Participating Agencies include all Cabinet Agencies. Participating Agencies also include any other state agencies that voluntarily adopt this Policy.

Policy — This policy on Personal Observance Leave.

Personal Observance Leave — Leave provided under the terms of this Policy.

**§ 3. Eligible Types of Employees**

Personal Observance Leave is available only to employees of a Participating Agency who are permanent, probationary, or time-limited. Temporary employees, interns, and contractors are not eligible for Personal Observance Leave.

To be eligible for Personal Observance Leave, employees must be either (a) full-time or (b) part-time with a schedule that is at least half-time. Part-time employees are not eligible for Personal Observance Leave if they work less than half-time.

**§ 4. Amount of Leave**

Full-time employees will receive eight hours of Personal Observance Leave each calendar year. Part-time employees will receive a prorated amount based on their number of hours compared to a full-time schedule.

**§ 5. Use of Leave**

*When the Leave Can Be Used*

Personal Observance Leave may be used for any single day of personal significance. This includes, but is not limited to, days of cultural or religious importance. The day used for

Personal Observance Leave does not have to be a day from the employee's own religious or cultural background.

The total amount of Personal Observance Leave awarded to an employee must be utilized in one work shift. Employees may use Personal Observance Leave prior to exhausting any accumulated compensatory time (comp time).

Employees may use their allotment of Personal Observance Leave beginning June 16, 2022, or on an earlier date announced by OSHR if the Personal Observance Leave can be coded and made available sooner.

#### *Arranging to Take the Day of Leave*

Employees should request Personal Observance Leave at least two weeks before the leave is needed unless such notice is impractical. Regardless of the employee's religious or cultural background, any day that the employee identifies as significant for cultural, religious, or personal reasons qualifies under this Executive Order and the Policy. Agencies must not question whether an employee's identification of a particular day for Personal Observance Leave is sincere and legitimate.

Agencies should, to the greatest extent possible, allow employees to use the leave at the time requested. However, the supervisor or other manager may require that the Personal Observance Leave be taken at a time other than the one requested, based on the needs of the agency.

Supervisors are encouraged to accommodate employees who may want to recognize the same day for Personal Observance Leave. However, when necessary to avoid impact to agency services, supervisors may ask employees to take their leave on different days.

#### **§ 6. How Personal Observance Leave is Credited during Hire and Transfer**

Employees who join the Participating Agency during the calendar year will be eligible for the full amount of Personal Observance Leave provided under this Policy to be used in that calendar year. The following business processes apply for existing employees, new hires, and reinstatements:

- At the time this Policy goes into effect, eligible employees at Participating Agencies will be credited with leave.
- Newly hired employees shall be credited with leave immediately upon their employment with a Participating Agency.

- Separated employees that are re-employed within the same calendar year with a Participating Agency will receive the same amount of leave as a newly hired employee unless they previously utilized the leave within the same calendar year.

For transfers between Participating Agencies and non-participating agencies, the following business processes apply:

- If an employee moves from one Participating Agency to another Participating Agency within the calendar year, unused Personal Observance Leave will transfer to the employee's new agency.
- If an employee moves from a Participating Agency to a non-participating agency, unused Personal Observance leave will not transfer to the non-participating agency.
- If an employee moves from a non-participating agency to a Participating Agency, the employee will receive leave as a newly hired employee, as indicated in above.

**§ 7. Other Limitations**

- Personal Observance Leave not taken by the end of the calendar year is forfeited; it shall not be carried into the next calendar year.
- Personal Observance Leave has no cash value and cannot be converted into retirement credit. Employees shall not be paid for unused Personal Observance Leave at separation. This leave shall not be payable upon death of an employee during state service.
- Personal Observance Leave shall not be applied to existing negative leave balances. This leave shall not be donated under the Voluntary Shared Leave policy.
- This leave may not be used for the same purposes as sick leave.

**§ 8. The Agencies Where This Policy Applies**

This Policy automatically applies to Cabinet Agencies. It also applies to state agencies, commissions, boards, or offices that choose to adopt this Policy (either in whole or with any modifications). Non-Cabinet agencies may adopt this Policy and become a Participating Agency by sending a letter or email to OSHR's Chief Deputy Director, Glenda Farrell. The request should include the phrase "Personal Observance Leave Policy" in the subject line.

**§ 9. Effective Date and Modification**

This Policy becomes effective on the date when it is issued. It may be modified or rescinded by the Director of State Human Resources (for Cabinet Agencies) or agency head (for non-Cabinet Participating Agencies) for any reason.

**§ 10. Miscellaneous Terms***No Private Right of Action*

This Policy is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

*Savings Clause*

If any provision of this Policy or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Policy which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Policy are declared to be severable.

**§ 11. Sources of Authority**

This Policy is issued independently under each of the sources of authority below:

- a) Article III of the Constitution of North Carolina and N.C.G.S. §§ 143A-4 and 143B-4, which provide that the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch.
- b) The statute providing the Governor with the power and duty to supervise the official conduct of all executive and ministerial officers (N.C.G.S. § 147-12).
- c) The statute empowering agency heads and the Director of OSHR to issue policies (N.C.G.S. § 143B-10(j)(3)).
- d) The authority of the agency head for employee leave programs under State Human Resources Commission rules (25 N.C. Admin. Code 01E .0101) promulgated pursuant to statute (N.C.G.S. § 126-4).
- e) The authority of the agency to establish initiatives for diversity and inclusion at all occupational levels of the state government workforce under State Human Resources Commission rules (25 N.C. Admin. Code 01L .0101) promulgated pursuant to statute (N.C.G.S. § 126-4).

**§ 12. History of this Policy**

Date	Version
June 6, 2022	First version



# State of North Carolina

**ROY COOPER**  
GOVERNOR

June 6, 2022

**EXECUTIVE ORDER NO. 262**

**EMPLOYEE LEAVE TO RECOGNIZE  
A DAY OF CULTURAL, RELIGIOUS, OR PERSONAL SIGNIFICANCE**

Celebrating North Carolina's Diverse Workforce

**WHEREAS**, the undersigned is committed to making North Carolina state government a competitive employer, capable of recruiting, retaining, and supporting top talent to serve North Carolinians; and

**WHEREAS**, North Carolina state government employs a robust and diverse workforce, reflecting the multiple cultural and religious communities of our State; and

**WHEREAS**, North Carolina state government celebrates its culturally and religiously diverse workforce, viewing diversity as central to the achievement of a high-performance organization; and

Juneteenth in North Carolina

**WHEREAS**, June 19<sup>th</sup>, or Juneteenth, sometimes referred to as National Freedom Day, Emancipation Day, or Juneteenth Independence Day, became a day of celebration and the oldest known commemoration of the abolition of sanctioned slavery in the United States; and

**WHEREAS**, each year, organizations and individuals throughout North Carolina and our nation celebrate African American heritage, history, freedom, and culture with events and ceremonies that reflect the power of community, family, art, and tradition in the face of oppression, through the celebration of Juneteenth; and

**WHEREAS**, Juneteenth National Freedom Day is recognized by Session Law 2007-450 in the State of North Carolina, but like several other cultural and religious days of observance, it is not a paid holiday for state employees; and

**WHEREAS**, the State of North Carolina encourages residents to observe Juneteenth as an opportunity to reflect, rejoice, and plan for a brighter future as we continue to address racial injustices in our society; and

Executive Branch Employees and Paid Time Off

**WHEREAS**, state employees celebrate a myriad of cultural observances, such as Juneteenth, Día de los Muertos, Indigenous People's Day, Kwanzaa, and Lunar New Year; and



**WHEREAS**, state employees celebrate a myriad of religious observances, such as Ash Wednesday, Diwali, Greek Orthodox Easter, Holi, Ramadan, Rosh Hashanah, and Yom Kippur; and

**WHEREAS**, state employees should have the flexibility to recognize a day of personal significance, such as cultural or religious celebrations; and

**WHEREAS**, Eligible State Employees (as defined below) will—for the duration and under the terms of this Executive Order and any policy issued under this Executive Order—be eligible to receive up to an additional eight (8) hours of paid Personal Observance Leave (as defined below) for any single day of personal significance, such as days of cultural and religious importance; and

**WHEREAS**, for these reasons, it is reasonable for the Office of State Human Resources (“OSHR”) to allow Eligible State Employees up to an additional eight (8) hours of paid Personal Observance Leave to use in their discretion for any single day of personal significance, such as days of cultural or religious importance; and

**WHEREAS**, this Personal Observance Leave is available for all Eligible State Employees from all cultural and religious backgrounds, and without any questioning of whether an employee’s identification of a particular day for Personal Observance Leave is sincere and legitimate; and

#### Statutory Authority and Determinations

**WHEREAS**, pursuant to Article III of the Constitution of North Carolina and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the State and is responsible for formulating and administering the policies of the executive branch of state government; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 147-12, the Governor has the authority and duty to supervise the official conduct of all executive and ministerial officers; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 143B-10(j)(3), the head of each principal state department and the Director of OSHR may adopt policies, consistent with law and with rules established by the Governor and with rules of the State Human Resources Commission (“Commission”), which reflect internal management procedures within each department, including policies governing the conduct of employees of the department; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 126-4, the Commission shall establish state human resources rules and policies subject to approval of the Governor; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 126-4, the Commission has established that “[a]dministration of the leave program within the scope of established policy shall be the responsibility of the agency head,” 25 N.C. Admin. Code 01E .0101; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 126-4, the Commission has established the state rules on equal employment opportunity plans and programs, 25 N.C. Admin. Code 01L .0101 et seq., along with the state Equal Employment Opportunity Policy, and these rules and policies direct agencies to promote initiatives for diversity and inclusion at all occupational levels of the state government workforce.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

#### **Section 1. Personal Observance Leave for State Employees.**

It shall be the policy of the Office of the Governor and Cabinet Agencies, as defined herein, to provide up to eight (8) hours of fully paid leave to all Eligible State Employees. As detailed below, this leave is for Eligible State Employees to utilize on any single day of personal significance, such as days of cultural or religious importance.

The undersigned directs and authorizes the Director of OSHR, on behalf of Cabinet Agency heads, to issue a Policy consistent with this Executive Order. The Policy may establish further details to implement this Executive Order. The Policy may be amended in the future by the Director, after consultation with the Office of the Governor. Any changes to the Policy may be made without amendment to this or any other Executive Order.

## **Section 2. Details of Leave.**

- a. **Applicability.** The Policy and the leave specified therein shall apply automatically only to Cabinet Agencies. All other state agencies are encouraged to voluntarily adopt this Policy or similar policies to promote the recruitment and retention of a diverse and inclusive workforce. Other state agencies may adopt the Policy by sending a letter or email to the Chief Deputy Director of OSHR.
- b. **Definitions.** For purposes of this Executive Order, the following terms have the following meanings:
  - i. **Cabinet Agencies** — Those agencies that are part of the Governor's Office or are headed by members of the Governor's Cabinet.
  - ii. **Eligible State Employee** — A full-time, part-time (half-time or more), permanent, probationary, or time-limited employee of a Cabinet Agency or other participating agency. Temporary employees, part-time employees who work less than half-time, interns, and contractors shall not be eligible for Personal Observance Leave.
  - iii. **Participating Agency** — An agency that chooses to adopt the Policy under this Executive Order, by notification to OSHR.
  - iv. **Policy** — The policy that the undersigned directed to be issued in Section 1 of this Executive Order.
  - v. **Personal Observance Leave** — Leave provided under the terms of this Executive Order and the Policy.
- c. **Amount of Leave.** Eligible State Employees shall be awarded up to eight (8) hours of Personal Observance Leave. Full-time employees will receive eight (8) hours. Part-time employees, if eligible, will receive a prorated amount based on their number of hours compared to a full-time schedule.
- d. **Use of Leave.** Personal Observance Leave is a form of management-approved leave, provided under the following terms:
  - i. All hours of Personal Observance Leave must be used on a single day of scheduled work. Employees may use Personal Observance Leave for any day of personal significance. This includes, but is not limited to, days of cultural or religious importance.
  - ii. Personal Observance Leave may be taken by an employee only upon authorization by the employee's supervisor.
  - iii. Supervisors should not require a justification from the employee to utilize the Personal Observance Leave.
  - iv. The day used for Personal Observance Leave does not have to be a day from the employee's own religious or cultural background.
  - v. The Policy will establish the date when Personal Observance Leave can begin to be used.
- e. **Renewal of Leave.** The initial Personal Observance Leave discussed in this Executive Order will expire on December 31, 2022. Subject to any amendments to the Policy, on January 1 of each calendar year, Eligible State Employees will receive a new eight (8) hours of Personal



Observance Leave that will be available for use until December 31 of that calendar year. Part-time employees, if eligible, will receive a prorated amount based on their number of hours compared to a full-time schedule. Any unused leave at the end of the calendar year will expire and will not transfer to the following year.

- f. No Cash Value. Personal Observance Leave shall have no cash value. If the employee does not use all Personal Observance Leave before it expires, the employee will not receive any premium pay. Employees will not be paid for unused Personal Observance Leave upon separation from their employment.

**Section 3. No Private Right of Action.**

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

**Section 4. Savings Clause.**

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

**Section 5. Miscellaneous.**

- a. This Executive Order does not apply to counties, municipalities, political subdivisions, local government agencies, or private entities.
- b. State entities other than Cabinet Agencies are encouraged but not required to follow this Executive Order.
- c. This Executive Order is effective immediately. This Executive Order shall remain in effect until repealed, replaced, or rescinded by future Executive Order of the Governor.

**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 6<sup>th</sup> day of June in the year of our Lord two thousand and twenty-two.

  
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Roy Cooper  
Governor

**ATTEST:**

  
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Elaine F. Marshall  
Secretary of State

