

CHAPTER 69-05.2-02

RESTRICTIONS ON FINANCIAL INTERESTS OF EMPLOYEES

Section

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69-05.2-02-01. Powers and duties of the commission relative to restrictions on financial interests.

The commission will:

1. Advise, assist, and guide employees required to file statements under section 69-05.2-02-02.
2. Promptly review the statement filed by an employee on prohibited financial interests.
3. Resolve prohibited financial interests by remedial action or by reporting the violations to the director of the office of surface mining reclamation and enforcement who is responsible for seeking penalties.
4. Certify that each statement has been reviewed and any prohibited financial interests resolved.
5. Furnish a blank statement forty-five days before the filing date established by subsection 1 of section 69-05.2-02-04 to each employee required to file a statement.
6. Annually inform each employee required to file a statement of the name, address, and telephone number of the person they may contact for advice and counseling.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-02. Duties of employees relative to restrictions on financial interests.

Employees performing functions or duties under North Dakota Century Code chapter 38-14.1 shall:

1. Have no prohibited financial interests.
2. File a complete statement of employment and financial interest with the commission upon beginning employment and annually thereafter on the filing date.
3. Comply with directives issued by persons responsible for approving each statement and with directives issued by persons responsible for ordering remedial action.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-03. Penalty for failure to file statement.

An employee who fails to file the required statement is subject to removal.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-04. Filing dates.

1. Employees performing functions or duties under North Dakota Century Code chapter 38-14.1 shall file annually on February first or other date provided by the commission.
2. New employees hired, appointed, or transferred to perform functions or duties under North Dakota Century Code chapter 38-14.1 are required to file upon beginning employment.
3. New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after filing their initial statement.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-05. Reporting requirements.

1. Each employee required to file a statement shall report⁴⁰ , on the form provided by the commission⁴⁰ , all employment and financial interests of the employee, the employee's spouse, minor children, or other relatives who are full-time residents of the employee's home.
2. All of the following financial interests must be listed:
 - a. Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment. The employee, the employee's spouse, or other resident relative is not required to report a retirement plan from which the employee will receive a guaranteed income. A guaranteed income is one unlikely to be changed as a result of commission actions.
 - b. Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements, including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs, or regulated investment companies not specializing in underground and surface coal mining operations.
 - c. Real property. Ownership, lease, royalty, or other interests or rights in land or minerals. Employees are not required to report lands developed and occupied for a personal residence.
 - d. Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions, such as banks, savings and loan associations, and credit unions, which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.
3. Employee certification, and, if applicable, a listing of exceptions:
 - a. The statement will provide for a signed certification by the employee that to the best of the employee's knowledge:

- (1) None of the listed financial interests represent a prohibited financial interest except as identified and described by the employee as part of the statement; and
 - (2) The information shown on the statement is true, correct and complete.
- b. An employee is expected to have complete knowledge of personal involvement in business enterprises such as a sole proprietorship and partnership, outside employment and the outside employment of the spouse and other covered relatives, and be aware of the information in the annual financial statement or other corporate or business reports circulated to investors or routinely made available to the public.
 - c. The exceptions shown in the certification must provide enough information for the commission to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:
 - (1) List the financial interests.
 - (2) Show the number of shares, estimated value, or annual income of the financial interests.
 - (3) Include any other information which the employee believes should be considered in determining whether the interest is prohibited.
 - d. Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing penalties.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-06. Gifts and gratuities.

1. Except as provided in subsection 2, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal company which:
 - a. Conducts, or is seeking to conduct, operations or activities regulated by the commission; or
 - b. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.
2. The prohibitions in subsection 1 do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employer, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:
 - a. Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and
 - b. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.
3. An employee who violates the provisions of this section shall be subject to removal.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-07. Remedial action to resolve prohibited interests.

1. Remedial action to effect resolutions. If an employee has a prohibited financial interest, the commission will promptly order the employee to resolve it within ninety days.
2. Remedial action may include:
 - a. Reassignment to a position having no function or duty under North Dakota Century Code chapter 38-14.1;
 - b. Divestiture of the prohibited financial interest; or
 - c. Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.
3. Reports of noncompliance. The commission will report unresolved cases to the director of the office of surface mining reclamation and enforcement who will determine whether to seek penalties. The report will include the original or a certified copy of the employee's statement and any other pertinent information, including a statement of current actions.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-08. Appeal from order for remedial action.

Any employee aggrieved by a commission order to resolve prohibited financial interests may submit a request for review to the commission secretary within thirty days. The commission will act on the request within thirty days and notify the aggrieved employee of the decision in writing. If the employee does not agree with the written decision, the employee may appeal, in writing, to the director of the central personnel division for a review.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38