

## CHAPTER 4-07-19 DISCIPLINARY ACTIONS

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### **4-07-19-01. Scope of chapter.**

This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by human resource management services.

**History:** Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

**General Authority:** NDCC 54-44.3-12

**Law Implemented:** NDCC 54-44.3-12(1)

### **4-07-19-02. Definitions.**

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Cause" means conduct or factors related to a regular employee's job duties, job performance, or working relationships that is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.
2. "Demotion" means an involuntary reduction in the current base salary or grade level where the newly assigned grade level forecloses pay adjustments of a regular employee resulting from reassignment for cause to a position in a lower class.
3. "Dismissal" means an involuntary termination of a regular employee's employment.
4. "Progressive discipline" means the disciplinary actions imposed to correct a regular employee's behavior, beginning with a less severe appropriate action and progressing to a more severe appropriate action, for repeated instances of poor job performance or for repeated violations of the same or similar rules or standards.
5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time of the disciplinary action.
6. "Suspension with pay" means a forced paid leave of absence.
7. "Suspension without pay" means a forced unpaid leave of absence.
8. "Working days" means Monday through Friday exclusive of holidays, unless otherwise defined by an agency.

**History:** Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

**General Authority:** NDCC 54-44.3-12

**Law Implemented:** NDCC 54-44.3-12(1)

**4-07-19-03. Discipline only for cause.**

A regular employee may be disciplined only for cause.

**History:** Effective September 1, 1992; amended effective November 1, 1996.

**General Authority:** NDCC 54-44.3-12

**Law Implemented:** NDCC 54-44.3-12(1)

**4-07-19-04. Use of progressive discipline.**

Progressive discipline must be used to correct a regular employee's job performance problems or for a violation of rules or standards unless an infraction or a violation of a serious nature is committed, including insubordination, theft, falsification of pay records, or assaulting or threatening to harm a supervisor or coworker, patient, or client, and for which the imposition of less severe disciplinary action would be inappropriate.

**History:** Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

**General Authority:** NDCC 54-44.3-12

**Law Implemented:** NDCC 54-44.3-12(1)

**4-07-19-04.1. Suspension without pay.**

A suspension without pay may not exceed thirty calendar days. If the suspended employee is exempt from the overtime provisions of the Fair Labor Standards Act of 1938 [29 C.F.R. 541.602(5)], the appointing authority may make deductions from pay for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules.

**History:** Effective November 1, 1996; amended effective July 1, 2010.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-12.2

**4-07-19-04.2. Suspension with pay.**

A suspension with pay may be used during an investigation or pending disciplinary action.

**History:** Effective July 1, 2004.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-12.2

**4-07-19-05. Appointing authority shall provide a written preaction notice.**

An appointing authority shall provide a written preaction notice when the suspension without pay, demotion, or dismissal of a regular employee is being considered. The preaction notice must include the following:

1. A statement that the appointing authority intends to take disciplinary action that may result in demotion, suspension without pay, or dismissal of the employee.
2. An explanation of the alleged charges against the employee.
3. A provision for the employee to respond in writing within a minimum of five working days.
4. A statement regarding the employee's status until a final decision is made.
5. A statement that a written notice of the final action taken will be provided to the employee.

The appointing authority shall determine the method of delivery that best guarantees the employee's receipt of the preaction notice.

**History:** Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004.

**General Authority:** NDCC 54-44.3-12

**Law Implemented:** NDCC 54-44.3-12(1)

**4-07-19-06. Appointing authority shall provide a written final action notice.**

Once a final decision has been made, the appointing authority shall provide a written notice to the employee of the final action to be taken. The final action notice must contain either of the following:

1. If the final action is less than demotion, suspension without pay, or dismissal, a statement must be made explaining the reasons for reducing the intended disciplinary actions. Any stipulations that may apply to continued employment must also be stated.
2. If the final action taken demotes, suspends, or dismisses the employee, a detailed explanation of the basis for the action must be provided. This notice must also inform the employee of the right to appeal the decision in accordance with the provisions of section 4-07-20.1-03.

The appointing authority shall determine the method of delivery that best guarantees the employee's receipt of the final action notice.

**History:** Effective November 1, 1996.

**General Authority:** NDCC 54-44.3-12(1)

**Law Implemented:** NDCC 54-44.3-12.2

**4-07-19-07. Agency reconsideration of prior discipline.**

An appointing authority may reopen and reconsider previously imposed discipline in the event the appointing authority determines that new information or circumstances exist or that discipline imposed pursuant to delegated authority is inconsistent with established agency policy, standard, or practice or otherwise is inappropriate in light of the adequacy of any prior investigation or the obligations the agency has to take corrective action. An appointing authority must rescind previously imposed discipline and restore any lost pay and other benefits of employment as a condition of exercising authority under this section. An employee who is demoted, suspended, or dismissed under this section may appeal the basis for reopening and reconsidering the previously imposed discipline as well as the grounds for the discipline imposed in accordance with the provisions of chapter 4-07-20.1.

**History:** Effective July 1, 2014.

**General Authority:** NDCC 54-44.3-12

**Law Implemented:** NDCC 54-44.3-12(1)