

ARTICLE 4-07

ORGANIZATION OF HUMAN RESOURCE MANAGEMENT SERVICES

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4-07-02-18. Bonuses. A recruitment, retention, or performance bonus may be provided according to North Dakota Century Code chapters 54-06-30 and 54-06-31.

History: Effective July 1, 2004.

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

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-19. Recruitment bonus. A recruitment bonus may be provided by an agency if the employee receiving the bonus was not employed by a state agency immediately preceding employment with the hiring agency, except when a recruitment bonus is provided to an employee for a referral program outlined in the agency's recruitment policy. If application of this rule would result in significant impact on the agency or negative fiscal consequences to the state, an exception may be sought under section 4-07-02-06.

History: Effective July 1, 2004.

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

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-20. Retention bonus. A retention bonus may be given as an incentive to retain an employee in state government unless the employee is leaving to work for another state agency. If application of this rule would result in significant impact on the agency or negative fiscal consequences to the state, an exception may be sought under section 4-07-02-06.

History: Effective July 1, 2004.

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

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-21. Performance bonus. Human resource management services may approve performance bonuses above the twenty-five percent limitation in N.D.C.C. § 54-06-30(4) upon a showing of special circumstances. Agencies must request, in writing, approval from the director or designee of human resource management services by documenting the special circumstances, which may include:

1. Instances of exceptional performance by employees in the face of a major disaster;
2. Instances of exceptional performance by employees as a result of federal or state program initiatives; or
3. Instances of exceptional performance by a team of employees.

History: Effective July 1, 2010.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-30

CHAPTER 4-07-19 DISCIPLINARY ACTIONS

Section

4-07-19-01	Scope of Chapter
4-07-19-02	Definitions
4-07-19-03	Discipline Only for Cause
4-07-19-04	Use of Progressive Discipline
4-07-19-04.1	Suspension Without Pay
4-07-19-04.2	Suspension With Pay
4-07-19-05	Appointing Authority Shall Provide a Written Pre-Action Notice
4-07-19-06	Appointing Authority Shall Provide a Written Final Action Notice

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 [~~Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq~~29 C.F.R. §541.602(5).], the appointing authority may ~~not suspend the employee without pay for a period less than one workweek as defined in section 4-07-~~

07-03 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

CHAPTER 4-07-20 GRIEVANCE PROCEDURES

Section

4-07-20-01	Scope of Chapter
4-07-20-02	Requirements for Grievance Procedures
4-07-20-02.1	Waiver of Agency Grievance Procedure
4-07-20-03	Absence of Established Written Agency Grievance Procedure

4-07-20-02. Requirements for grievance procedures. Each agency, department, institution, board, and commission subject to this chapter shall establish internal grievance procedures that include the following:

1. A provision that allows an employee to grieve an employer action of demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment. The provision must require the employee to begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The provision must also require that in the case of reprisal the employee shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action.
2. Specific steps to be followed in processing the grievance, limitations on the amount of time the parties have to respond, and any procedures for extending time limitations.
3. A requirement that the parties must respond to the issues raised in the grievance.
4. A method of counting time that is in working days.
5. Provisions that allow an employee a reasonable amount of time to process a grievance without loss of pay during regular working hours.

6. An option that if the appointing authority misses an established deadline in the grievance procedure, the grievance may be advanced to the next step.
7. The use of a standard grievance form.

History: Effective May 1, 1994; amended effective November 1, 1996; July 1, 2004; July 1, 2010.

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-20.1 APPEALS OF EMPLOYER ACTIONS

Section

4-07-20.1-01	Scope of Chapter
4-07-20.1-02	Definitions
4-07-20.1-03	A Regular Employee May File a Grievance Regarding an Employer Action
4-07-20.1-04	Commencement of Agency Grievance Procedure – Time Limitations
4-07-20.1-05	Waiver of Agency Grievance Procedure
4-07-20.1-06	A Regular Employee May Appeal to Human Resource Management Services
4-07-20.1-07	Limitations for Reduction-in-Force Appeal
4-07-20.1-08	Procedure for Appeals of <u>Employer Actions</u> to Human Resource Management Services

4-07-20.1-01. Scope of chapter. This chapter applies to regular employees.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Employer action" means an action taken by an appointing authority that affects a regular employee through a demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal.
2. "Forced relocation" means the involuntary transfer or reassignment of a regular employee from one work location in the state to another work location in the state that requires the employee to move to a different place of residence. Telecommuting and other alternative work location agreements are not considered forced relocations.

3. "Reduction-in-force" means the loss of employment by a regular employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization.
4. "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 the employer action occurred.
5. "Reprisal" means an unfavorable employment-related action taken against an applicant or ~~regular~~ employee by an appointing authority for appealing to human resource management services or the state personnel board; for exercising the employee's rights under the Public Employees Relations Act of 1985, North Dakota Century Code chapter 34-11.1; for testifying before a legislative committee; or for requesting timely assistance under the employee assistance program.
6. "Waiver" means a written agreement between a regular employee and the appointing authority not to proceed with the agency grievance procedure and to permit an appeal to be made directly to human resource management services.
7. "Working days" means Monday through Friday exclusive of holidays.
8. "Date of service" means the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery of electronic means, the date of actual delivery.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2, NDCC 34-11.1-04(5)

4-07-20.1-04. Commencement of agency grievance procedure – Time limitations. The employee shall begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The employee grieving reprisal action shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to human resource management services. The agency appointing authority or designee may for good cause shown, waive the time limitations for filing a grievance. Good cause means those circumstances that reasonably and without any fault on the part of the grievant

prevented the filing of a grievance in a timely fashion. In no event may a grievance be deemed timely after sixty days have elapsed from the date of the employer action.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-08. Procedure for appeals of employer actions to human resource management services.

1. The employee shall file the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be delivered, mailed, or transmitted by ~~facsimile~~ electronic means and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. An additional fifteen working days is not available if the requested waiver is denied. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual notice delivery. The agency shall prepare a certificate of ~~mailing service, a certificate or admission of delivery in person, or other or provide~~ reliable means, to show proof of the date of mailing, transmittal by electronic means, or actual hand delivery.
2. The director, human resource management services, shall within two working days submit a written request to the director, office of administrative hearings, to conduct a hearing on behalf of the division and shall forward a copy of the appeal form to the appointing authority.
3. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare an appropriate order dismissing the appeal, which shall be final, and provide a copy of it to the parties. The administrative law judge may, for good cause shown, waive the time limitations for filing an appeal. Good cause means those circumstances that reasonably and without any fault on the part of the appellant prevented the filing of an appeal in a timely fashion. In no event may an appeal be deemed timely after sixty days have elapsed from the date of the employer action.
4. The administrative law judge shall consider whether human resource management services has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the internal agency grievance process. If the administrative law judge is unable to establish whether human resource management services has jurisdiction over the

subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.

5. If the administrative law judge determines that human resource management services does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
6. If it is determined that human resource management services has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.
7. The administrative law judge shall notify the employee and the appointing authority of the final decision by sending each of them a copy of the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by subsection 3 of North Dakota Century Code section 28-32-39. The parties shall implement the final decision within any time periods specified by the administrative law judge.
8. The administrative law judge shall return the completed appeal file to human resource management services.
9. Any party to the appeal may review the recordings of the hearing by making a request to human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-20.2 **APPEALS OF DISCRIMINATION OR REPRISAL**

Section

4-07-20.2-01	Scope of Chapter
<u>4-07-20.2-01.1</u>	<u>Employees Not in the Classified Service May Appeal Claims of Reprisal</u>
4-07-20.2-02	Definitions
4-07-20.2-03	Statutory Definitions
4-07-20.2-04	Applicants, <u>Probationary Employees</u> , or Regular Employees May Appeal <u>Reprisal or Discrimination</u> in Employment

- 4-07-20.2-04.1 Procedure for Applicant Appeals of Discrimination or Reprisal in Employment to Agency Appointing Authority
- 4-07-20.2-05 Completion of Agency Grievance Process Prior to Appeal to Human Resource Management Services
- 4-07-20.2-06 Waiver of Agency Grievance Procedure
- 4-07-20.2-07 Procedure for Appeals of Discrimination or Reprisal to Human Resource Management Services

4-07-20.2-01. Scope of chapter. This chapter applies to applicants for positions classified by human resource management services, probationary employees or and regular employees in classified positions who want to appeal reprisal or who want to appeal discrimination in employment because of race, color, religion, sex, national origin, age, genetics, the presence of any mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-01.1. Employees not in the classified service may appeal claims of reprisal. This chapter also applies to employees not in the classified service who appeal a claim of reprisal under NDCC 34-11.1-04(5).

History: Effective July 1, 2010

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

Law Implemented: NDCC 34-11.1-04(5)

4-07-20.2-02. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Applicant" means a person who has applied for a position classified by human resource management services and who has complied with the application procedures required by the employing agency.
2. "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 the alleged action occurred.
3. "Working days" means Monday through Friday exclusive of holidays.
4. "Date of service" means the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery of electronic means, the date of actual delivery.

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

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-03. Statutory definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to them under North Dakota Century Code chapter 14-02.4 and section 34-11.1-04(5).

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, 34-11.1-04(5)

4-07-20.2-04. Applicants, probationary employees, or regular employees may appeal reprisal or discrimination in employment. Applicants for positions classified by human resource management services and probationary or regular employees in classified positions may appeal reprisal or may appeal discrimination in employment because of race, color, religion, sex, national origin, age, genetics, the presence of any mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-04.1. Procedure for applicant appeals of discrimination or reprisal in employment to agency appointing authority.

1. An applicant who has completed a timely and properly completed application for a classified position within an agency and who alleges discrimination or reprisal in employment shall file a written appeal to the agency appointing authority. The letter of appeal must specify what alleged discriminatory or reprisal action against the applicant was taken by the agency. The appeal information must be delivered, mailed, or transmitted by ~~facsimile~~ electronic means and must be received in the office of the agency appointing authority by five p.m. within fifteen working days of the alleged discriminatory or reprisal action.
2. The agency appointing authority has fifteen working days from the receipt of the appeal to review the appeal and provide a written response to the applicant.

3. If the applicant does not agree with the response of the agency appointing authority, the applicant may further appeal to human resource management services in accordance with section 4-07-20.2-07.

History: Effective July 1, 2008; amended effective July 1, 2010.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-20.2-05. Completion of agency grievance process prior to appeal to human resource management services. A probationary or regular employee shall complete the agency grievance process prior to submitting an appeal to human resource management services for an appeal hearing, unless a waiver is granted as provided for in section 4-07-20.2-06. The employee shall begin the agency grievance procedure within fifteen working days from the date of the alleged discriminatory or reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to human resource management services. The agency appointing authority or designee may for good cause shown, waive the time limitations for filing a grievance. Good cause means those circumstances that reasonably and without any fault on the part of the grievant prevented the filing of a grievance in a timely fashion. In no event may a grievance be deemed timely after sixty days have elapsed from the date of the employer action. If an agency does not have an established written grievance procedure, the employee shall submit the appeal to human resource management services within fifteen working days from the date of the alleged discriminatory or reprisal action.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-06. Waiver of agency grievance procedure. A waiver of the agency grievance procedure is allowed by mutual agreement of the probationary or regular employee and appointing authority. The waiver must be signed by both parties within fifteen working days of the alleged discriminatory or reprisal action. Upon obtaining the waiver, the employee may appeal directly to human resource management services in accordance with section 4-07-20.2-07.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-07. Procedure for appeals of discrimination or reprisal to human resource management services.

1. ~~The~~ A probationary or regular employee shall file the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be delivered, mailed, or transmitted by

~~facsimile~~ electronic means and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure or within fifteen working days from the date of the waiver. An additional fifteen working days is not available if the requested waiver is denied. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual notice delivery. The agency shall prepare a certificate of ~~mailing, a certificate or admission of delivery in person, service, or other~~ provide reliable means, to show proof of the date of mailing, transmittal by electronic means or actual hand delivery.

2. An applicant shall file the appeal form by delivery, mail, or transmittal by ~~facsimile~~ electronic means, and the form must be received in the human resource management services office by five p.m. within fifteen working days of the service of notice of the agency appointing authority's response to the alleged discriminatory or reprisal action. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual notice delivery. The agency shall prepare a certificate of ~~mailing, a certificate or admission of delivery in person, service, or other~~ provide reliable means, to show proof of the date of mailing, transmittal by electronic means or actual hand delivery.
3. An employee in a non classified position may appeal claims of reprisal by filing the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be delivered, mailed, or transmitted by facsimile and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure, or within fifteen working days of the date of the reprisal action if an agency does not have an established grievance process. When an employee is using an agency internal grievance procedure, the date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery.
34. The director, human resource management services, shall within two working days submit a written request to the director, office of administrative hearings, to conduct a hearing on behalf of human resource management services and shall forward a copy of the appeal form to the affected appointing authority

45. The administrative law judge shall initially consider whether the appeal was filed within required time limitations. If the administrative law judge determines the time limitations have not been met, the administrative law judge shall prepare an appropriate order dismissing the appeal, which shall be final, and provide a copy of it to the parties. The administrative law judge may, for good cause shown, waive the time limitations for filing an appeal. Good cause means those circumstances that reasonably and without any fault on the part of the appellant prevented the filing of an appeal in a timely fashion. In no event may an appeal be deemed timely after sixty days have elapsed from the date of the employer action.
56. The administrative law judge shall consider whether human resource management services has jurisdiction over the subject matter of the appeal and whether all rules and regulations were followed in the internal agency grievance process. If the administrative law judge is unable to establish whether human resource management services has jurisdiction over the subject matter of the appeal or whether the appropriate rules were followed, a hearing may be conducted to ascertain the facts related to those issues.
67. If the administrative law judge determines that human resource management services does not have jurisdiction in the matter of the appeal, the administrative law judge shall prepare findings of fact and conclusions of law, if appropriate; issue a final decision dismissing the appeal; and provide a copy of them to the parties.
78. If it is determined that human resource management services has jurisdiction over the appeal, the administrative law judge shall schedule a hearing. The administrative law judge shall conduct the hearing and related proceedings, receive evidence related to the issues, prepare findings of fact and conclusions of law, and issue a final decision.
89. The administrative law judge shall notify the employee or the applicant and the affected appointing authority of the final decision by sending each of them the findings of fact, conclusions of law, and final decision. Notification shall be accomplished in the same manner as for notification of final orders required by subsection 3 of North Dakota Century Code section 28-32-39. The parties shall implement the final decision within any time periods specified by the administrative law judge.
910. The administrative law judge shall return the completed appeal file to human resource management services.
1011. Any party to the appeal may review the recordings of the hearing by making a request to human resource management services.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2, 34-11.1-04(5)

CHAPTER 4-07-36 TRAINING AND TUITION REIMBURSEMENT

Section

4-07-36-01 Scope of Chapter

4-07-36-02 Payment of Training and Tuition

4-07-36-01. 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 July 1, 2008.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-36-02. Payment of training and tuition. An appointing authority may adopt policies to provide training and educational opportunities to its employees to learn new required skills or to enhance their current skills, to increase the opportunity for advancement within the agency or state service, to increase proficiency and productivity, and to improve work performance.

Costs of training or educational courses, including tuition and fees, may be paid for, within budgetary constraints, by the agency or reimbursed to the employee in accordance with agency policy.

An employee who leaves employment with the state agency within two years of receiving the tuition must repay the tuition received on a prorated basis.

History: Effective July 1, 2008; amended effective July 1, 2010.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12, 54-06-33