

NOTICE OF INTENT TO
ADOPT AND AMEND ADMINISTRATIVE RULES

TAKE NOTICE that ND Human Resource Management Services (HRMS), in cooperation with the State Personnel Board, will hold a public hearing to address proposed new sections and amendments to N.D. Admin. Code Article 4-07 at 10:00 a.m. on September 26, 2011, in the Fort Totten Room, Ground Floor of the Capitol. Written and oral comments will be accepted at the hearing.

The proposed rules will reflect changes to N.D.C.C. ch. 54-44.3; N.D.C.C. ch. 37-19.1; and N.D.C.C. § 54-06-36. ND Human Resource Management Services will be adopting and amending rules of the Division relating to the following chapters of N.D. Admin. Code Article 4-07:

- N.D. Admin. Code § 4-07-05-07 Veterans' Preference

SB 2279 modified N.D.C.C. ch. 37-19.1, the law regulating veterans' preference requirements in public employment. It changed the title of Personnel System to Competitive Personnel System, clarified that veterans' preference pertains to recruitment and selection processes, outlined required documentation applicants must submit to receive veterans' preference, clarified required preference requirements and a distinction between hiring through a competitive system and a non-competitive system, clarified that an administrative head of a department required by law is exempt from veterans' preference, clarified the contents of a vacancy announcement regarding the posting of positions exempted from veterans' preference, clarified that state employees are not eligible for veterans' preference when applying for employment within the same agency or other state agencies, clarified that an employee of a political subdivision is not eligible for preference when applying for a different job within the same political subdivision, clarified preference of a spouse of a disabled veteran, clarified applicant's grievance and appeal process, and provided for legislative management to consider a study of ND veterans' preference laws. N.D. Admin. Code § 4-07-05-07 is amended because the detail of veterans' preference is now included in N.D.C.C. ch. 37-19.1. Agencies will be referred directly to the statute for the detailed requirements of veterans' preference rather than HRMS Administrative Rules repeating the information. The History section was amended to reflect the effective date of the administrative rule change August 1, 2011. The Law Implemented section was amended to include N.D.C.C. ch. 37-19.1 which is the veterans' preference statute.

- N.D. Admin. Code § 4-07-05-08 Vacancy Announcement Contents

SB 2279 requires agencies posting positions that are exempt from veterans' preference to state in the advertisement that veterans' preference does not apply to the position being advertised. The History and Law Implemented sections were amended to reflect the effective date of this change August 1, 2011, and to reference N.D.C.C. § 37-19.1-02(4).

- N.D. Admin. Code § 4-07-06-02 Probationary Period

This rule change is intended to correct confusion about the status of employees who accept a promotion. The language makes it clear that employees do not serve a probationary period upon promotion within an agency. The History section was amended to reflect the effective date of the administrative rule change which is anticipated to be January 1, 2012. The Law Implemented section was corrected to include the N.D. Century Code citation.

- N.D. Admin. Code § 4-07-13-07 Uses of Sick Leave

SB 2213 increases the use of available sick leave from forty to eighty hours within one year. In addition, this legislation provides that an employee may each year, with approval, take up to an additional ten percent of the employee's accrued sick leave to care for the employee's child,

spouse, or parent with a serious health condition. N.D. Admin. Code § 4-07-13-07 (4) implements this legislation, and N.D. Admin. Code § 4-07-13-07(5) is renumbered. The effective date of the 40 hours to 80 hours of sick leave usage became effective when Governor Dalrymple signed the legislation on April 26, 2011. The effective date of the additional 10% usage of sick leave is the effective date of the approved HRMS Administrative Rules which is anticipated to be January 1, 2012. The History and Law Implemented sections were amended to reflect the effective date and reference to N.D.C.C.

- N.D. Admin. Code ch. 4-07-14 Funeral Leave and Honor Guard Leave

SB 2060 provides twenty-four paid working hours per calendar year for an employee in a classified position to participate in an honor guard for a funeral service of a veteran. Rather than create an entire separate chapter for honor guard leave, the funeral leave N. D. Admin. Code ch. 4-07-14 was amended to include honor guard leave.

- ✓ N.D. Admin. Code § 4-07-14-01. Scope of chapter. This section was amended to include the effective date of August 1, 2011 and to include the law implemented N.D.C.C. § 54-06-36.
- ✓ N.D. Admin. Code § 4-07-14-02. Definitions. This section was amended to include a reference to N.D.C.C. § 54-06-36.
- ✓ N.D. Admin. Code § 4-07-14-02(3)(4)(5). Definitions. This section implements the legislation by defining honor guard leave, honor guard, and essential ceremonial role so it is clear that a member of the flag folding team, a firing party or a bugler performing as part of the official funeral honors is eligible to take honor guard leave. This section was also amended to include the effective date of the administrative rule change August 1, 2011, and to include the reference to the law implemented N.D.C.C. § 54-06-36.
- ✓ N.D. Admin. Code § 4-07-14-03. Granting funeral or honor guard leave. This section was amended to include honor guard leave to make it clear that an appointing authority may grant a request for such leave even if the absence of the employee might interfere with the normal operations of the agency. The History and Law Implemented sections were amended to reflect the effective date of the administrative rule change August 1, 2011, and the N.D.C.C. citation.
- ✓ N.D. Admin. Code § 4-07-14-04. Not considered sick leave or annual leave. This section was amended to include honor guard leave to clarify that it is not to be considered sick or annual leave. The History and Law Implemented sections were amended to reflect the effective date of the administrative rule change as August 1, 2011, and the N.D.C.C. citation.

- N.D. Admin. Code § 4-07-14-02 Definitions

The term "Family" was amended to include brother-in-law and sister-in-law to correct what was an apparent omission and resultant inconsistency in the application of funeral leave. The interpretation of the current definition is that an employee can take funeral leave for those brothers-in-law and sisters-in-law who are blood relatives of the employee or the employee's spouse only because brother-in-law and sister-in-law is currently not listed, but if it is a spouse of the blood brother or sister, the employee has to take annual leave. Clearly, half of all brothers-in-law and sisters-in-law are being treated differently. When a death in a family occurs, it does not seem appropriate for one member of the family to take funeral leave while another family member is required to take a different type of leave to attend the same funeral for the same family member. This incident has happened, and agencies have therefore requested an amendment to this rule. This rule clarifies that all brothers-in-law and sisters-in-law are eligible "family" for funeral leave.

- N.D. Admin. Code § 4-07-24-07 Merit System Application Appeals to the Agency Appointing Authority

This section was amended to include electronic means and to define the date of service of the notice. In addition, this section directs the agency to prepare a certificate of service or provide reliable means to show proof of the date of mailing, transmittal by electronic means, or hand delivery of the letter to the applicant. These changes help to clarify timeframes for appeals and provide consistency with other appeals procedures within HRMS administrative rules. The History section was amended to reflect the effective date of the administrative rules change which is anticipated to be January 1, 2012.

- N.D. Admin. Code § 4-07-24-08 Merit System Application Appeals to Human Resource Management Services

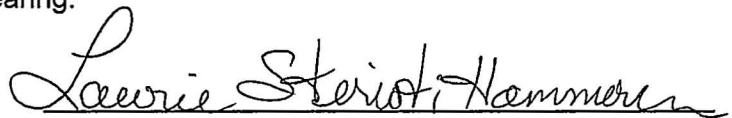
This section was amended to better clarify the timeframe for appeals, to define date of service of the notice, to direct the agency to prepare a certificate of service or provide reliable means to show proof of the date of mailing, transmittal by electronic means, or hand delivery of the agency's response to the appeal. These changes help to clarify timeframes for appeals and provide consistency with other appeals procedures within HRMS administrative rules. The History section was amended to reflect the effective date of the administrative rules change which is anticipated to be January 1, 2012.

The proposed rules and amendments are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

The proposed rules may be reviewed at the office of ND Human Resource Management Services, 600 East Boulevard Avenue, Dept. 113, Bismarck ND 58505-0120, or on the HRMS website at www.nd.gov/hrms. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address or calling (701) 328-3293. Written comments on the proposed rules sent to the above address or e-mailed to hrms@nd.gov, and received by October 6, 2011, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact ND Human Resource Management Services at the above telephone number or address at least five days before the public hearing.

Dated this August 23, 2011.


Laurie Sterioti Hammeren, SPHR
Director of Human Resource Management Services

**ABBREV. NOTICE OF INTENT
TO ADOPT & AMEND
ADMINISTRATIVE RULES**

relating to human resource and
risk management issues
in State government.

**ND Human Resource
Management Services (HRMS) and
Risk Management Division (RMD)**
will hold a public hearing to address
proposed changes to the North Dakota
Administrative Code at

**Fort Totten Room
State Capitol, Bismarck
Monday, September 26, 2011
10:00 a.m. CDT**

A copy of the proposed rules may be
obtained and written comments may
be submitted by contacting:

- HRMS, State Capitol, 14th Floor, 600
E. Boulevard Ave., Dept. 113,
Bismarck ND 58505-0120; (701) 328-
3293, 1-800-366-6888;
hrms@nd.gov; or www.nd.gov/hrms
- RMD, Century Center, 1600 Century
Ave., Suite 4, Bismarck ND 58503-
0649; (701) 328-7584, 1-866-534-
2834; rminfo@nd.gov; or
www.nd.gov/risk.

Written comments must be received by
October 6, 2011. If you require special
accommodations, please contact HRMS
at least 5 days prior to the hearing.

Dated this 23rd day of August 2011
Laurie Steriotti Hammeren, Director, HRMS
Tag Anderson, Director, RMD