

## CHAPTER 4-07-24 MERIT SYSTEM APPLICATIONS AND APPEALS

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### **4-07-24-01. Scope of chapter.**

This chapter applies to applicants who apply for positions in agencies covered by the North Dakota merit system and to all agencies, departments, institutions, boards, commissions, and political subdivisions required to comply with standards for a merit system of human resource administration.

**History:** Effective September 1, 1992; amended effective July 1, 1995; July 1, 2004.

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

**Law Implemented:** NDCC 54-44.3-12

#### **4-07-24-01.1. Definitions.**

The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapter 54-44.3, except "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 personnel action occurs.

**History:** Effective November 1, 1996; amended effective January 1, 1998; July 1, 2004.

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

**Law Implemented:** NDCC 54-44.3-12

#### **4-07-24-02. Application for a position.**

Each application for a position in an agency covered by the North Dakota merit system must be made on an application, supplemental application form, or as otherwise specified by the employing agency.

**History:** Effective September 1, 1992; amended effective July 1, 1995.

**General Authority:** NDCC 54-44.3

**Law Implemented:** NDCC 54-44.3

#### **4-07-24-03. Open register applications.**

Repealed effective July 1, 1995.

#### **4-07-24-04. Application accepted after announced.**

The employing agency shall accept an application for a position only after it has been announced. An application may not be accepted after the closing date.

**History:** Effective September 1, 1992; amended effective July 1, 1995.

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

**Law Implemented:** NDCC 54-44.3-12

**4-07-24-05. Investigation of application information.**

The employing agency may investigate an applicant's training and experience in order to verify the application information provided. If the investigation produces evidence that the applicant falsified information, the employing agency may take any necessary action and notify the applicant of the action.

**History:** Effective September 1, 1992; amended effective July 1, 1995.

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

**Law Implemented:** NDCC 54-44.3-12

**4-07-24-06. Disapproval and disqualification of applications.**

Applications may be disapproved or disqualified after review for any of the following reasons:

1. If an applicant does not meet the minimum qualifications.
2. If an applicant has made a false statement of material fact on the application.
3. If an erroneous approval was made by the employing agency.
4. If an applicant has used or attempted to use political pressure or bribery to secure an advantage in the examination or employment process.
5. If an applicant has directly or indirectly obtained information regarding the examination process to which the applicant was not entitled.
6. If there are other valid reasons to justify the disqualification.

**History:** Effective September 1, 1992; amended effective July 1, 1995.

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

**Law Implemented:** NDCC 54-44.3-12

**4-07-24-07. Merit system application appeals to the agency appointing authority.**

1. An applicant who has submitted a timely and properly completed application for a position within an agency, department, or institution subject to this chapter and who has been determined by the employing agency to be disqualified for that position because of failure to meet the minimum qualifications, may appeal the disqualification to the agency appointing authority.
2. The employing agency must notify an applicant who fails to meet the minimum qualifications for a position of the applicant's disqualification and right to appeal by letter mailed to the applicant's last-known address or transmitted by electronic means. If an applicant wishes to appeal the disqualification, the applicant shall file a written appeal to the agency appointing authority. The appeal must be delivered, mailed, or transmitted by electronic means and must be received by the agency appointing authority within fifteen working days from the date of notice of the applicant's disqualification. 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 letter of appeal must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.

3. 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.

**History:** Effective July 1, 1995; amended effective January 1, 2012.

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

**Law Implemented:** NDCC 54-44.3-12

**4-07-24-08. Merit system application appeals to human resource management services.**

1. If an applicant is a regular employee and does not agree with the response of the agency appointing authority, the applicant may further appeal the disqualification to human resource management services. A letter of appeal must be addressed to the Director, Human Resource Management Services, 600 East Boulevard Avenue, Dept. 113, Bismarck, ND 58505-0120, and must be delivered, mailed, or transmitted by electronic means and must be received in the human resource management services office by five o'clock p.m. within fifteen working days of service of the notice of the agency's response to the appeal. 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 letter of appeal must specify the basis upon which the applicant relies to assert that the applicant meets the minimum qualifications for the position.
2. Upon receipt of the appeal letter, the director, human resource management services, shall certify the appeal and submit a written request to the director, office of administrative hearings, to conduct the hearing in accordance with this section.
3. If the applicant and the appointing authority agree in writing, an appeal taken under this section may be disposed of informally as provided in this subsection. The administrative law judge shall notify the applicant and the appointing authority to provide documentation upon which each relies to assert its position on the appeal. Each party may also provide a memorandum of support for its position and may request oral argument before the administrative law judge at the time it submits its memorandum. If either party requests oral argument before the administrative law judge, the administrative law judge shall notify the parties of the time, date, and location of the oral argument. After oral argument, if any, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and human resource management services. If the applicant and the appointing authority do not agree to informal disposition of the appeal, the administrative law judge shall conduct a hearing in accordance with this section. After the hearing, the administrative law judge shall issue findings of fact, conclusions of law, and a final order and provide them to the parties and human resource management services.

**History:** Effective August 1, 1995; amended effective November 1, 1996; July 1, 2004; January 1, 2012.

**General Authority:** NDCC 28-32-05.1, 54-44.3-12

**Law Implemented:** NDCC 28-32-05.1, 54-44.3-12