

## TESTIMONY

My name is Bonnie Johnson and I serve as the Cass County Administrator. During the 2007 legislative session, Senate Bill 2321 (attached as Exhibit 1) was passed into law. The two sections were codified as NDCC 54-44.3-31 and NDCC 54-44.3-32 and are attached as Exhibits 2 and 3.

In January of 2008, our county commissioners received proposed administrative rules regarding the merit system exemption process, as well as other organizational operating issues affecting state merit system employees. The first "cut" of the proposed administrative rules caused a great deal of concern to our elected county commissioners. It was Cass County's understanding the legislative intent was to allow state and local jurisdictions to stream line personnel systems to ensure equitable operational procedures for counties. From the board's perspective, the proposed rules would do nothing to achieve the stated objectives. In fact, the proposed rules would further divide the two systems.

As a part of the process, Cass County was given an opportunity to respond to the proposed amendments and did so in a letter dated February 15, 2008, to Human Resource Management Services (HRMS), a copy of which is attached as Exhibit 4. The HRMS agency has now amended several of the original proposed amendments and Cass County now has three remaining objections. Those objections are as follows:

**1) Section 4-07-11-07 Reemployment following a reduction in force**

This section sets forth criteria regarding reemployment of former employees who may have lost their jobs due to a reduction in force. Cass County already has a reduction in force policy and would like to continue to use it for all employees so we achieve equity within our organization. I am attaching the proposed state amendment as Exhibit 5 and the Cass County policy as Exhibit 6.

2) **Section 4-07-12-12 Annual leave and reemployment**

In this section the state has arbitrarily changed the number of years allowed to an employee who leaves service for "greener pastures". Under the current administrative rule and current Cass County policy, one year is allowed by the employers for an employee to return and receive credit for continuous years of service for leave accrual rates. The proposed amendment attached as Exhibit 7 changes the one year to three years.

In other state policies, HRMS includes the following language: "A local government agency subject to the North Dakota merit system adopting or using a different accrual schedule shall promptly file a copy of that schedule with Human Resource Management Services." Cass County has suggested this same language be added to 4-07-12-12 to allow Cass County to continue to use the one year reemployment standard for all of its 400 employees.

3) **Section 4-07-28-02 Definitions (Probationary/Regular Status)**  
**Section 4-07-20-02.1 Waiver of agency grievance procedure**  
**Section 4-07-20.1-05 Waiver of agency grievance procedure**  
**Section 4-07-20.1-08 Procedure for appeal to Human Resource Management Services**  
**Chapter 4-07-34.1 New chapter on local county social service merit systems**

Attached as Exhibit 8 are the proposed policies as stated above.

Cass County, as well as other counties in North Dakota, along with many states in the country, operate under the doctrine of "at-will employment". NDCC 34-03-01 states that "employment without a definite term is presumed to be at-will, and an at-will employee may be terminated without cause."

Social Service employees became a part of the state merit system under early provisions of the Code of Federal Regulations (CFR), Title 5, Volume 2, Subpart F. I am attaching, as Exhibit 9, a copy of the existing Federal Regulations. In earlier regulations, there was a specific requirement that stated in part, "the requirements provide that permanent employees will not be subject to separation except for cause or such reasons as curtailment of work or lack of funds."

This section, however, has been amended and now reads, "retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected." Based on this change in the Federal regulations, Cass County has challenged the proposed rules and the outlined processes.

In February 2008, in an effort to resolve the issue, the Cass County Board of Commissioners asked HRMS to seek an Attorney General's opinion regarding this question of whether the exemption statutes allowed HRMS to continue to require the "for cause" employment standard rather than allow Cass County to merge the Social Service employees under state law into our uniform "at-will" policy. Further, the Cass County Board of Commissioners meet with HRMS in Fargo on May 5, 2008, regarding these proposed rules.

Cass County's goals have always been to create a unified personnel system, reduce pay inequities, and ensure equitable compensation and benefits for all Cass County employees.

The Federal statutes in 5 CFR Sec. 900.601 (see Exhibit 9) "encourages innovation and allows for diversity among state and local governments in the design, execution and management of their systems of personnel administration as provided by that act."

If the proposed regulations pass as written, Cass County would have no choice but to continue with two separate employment systems...the at-will system with local policies and local compensation for two-thirds of our employees and the merit system for Social Service employees with state policies and state driven compensation. We do not believe that was the intent of the legislature, nor is it in the best interest of local government.



**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2321  
(Senators Mathern, Hacker, J. Lee)  
(Representatives Wieland, N. Johnson, Conrad)

AN ACT to create and enact two new sections to chapter 54-44.3 of the North Dakota Century Code, relating to authorizing political subdivisions to request an exemption from coverage under the state merit system.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Two new sections to chapter 54-44.3 of the North Dakota Century Code are created and enacted as follows:

Political subdivision may request to be exempted from state merit system. A political subdivision subject to the merit system under this chapter may file a request with the division and the director of the department of human services to be exempted from the merit system. The request must describe a plan and policy that assures the political subdivision has developed a merit system plan that meets federal standards for personnel administration. The division and the director of the department of human services shall authorize the political subdivision plan within sixty days of receiving a request under this section if the plan and policies meet federal requirements. If the division and the director of the department of human services determine that the proposed plan and policies fail to meet the federal requirements, the division and the director shall deny the request and notify the requester of the specific reasons for the denial.

Political subdivision merit system compliance. The division and the department of human services shall develop oversight and audit procedures for political subdivision merit systems to assure compliance with federal merit system principles. If the division and the department of human services determine that a political subdivision has failed to maintain compliance with federal merit system principles, the division and the department shall notify the political subdivision of the noncompliance and order the political subdivision to take corrective action. If a political subdivision does not take the necessary corrective action to comply with federal merit system principles, the division and the department of human services shall revoke the political subdivision's exemption from the state merit system and return the political subdivision to the state merit system. The political subdivision is responsible for any penalty assessed by a federal authority for a noncompliant political subdivision merit system.

Citation/Title

ND Code Sec. 54-44.3-31, Political subdivision may request to be exempted from state merit system

\*27407 N.D. Code § 54-44.3-31

**WEST'S NORTH DAKOTA CODE**  
**TITLE 54. STATE GOVERNMENT**  
**CHAPTER 54-44.3. CENTRAL PERSONNEL SYSTEM**

Current through the 2007 Regular Session of the 60th Legislative Assembly

**§ 54-44.3-31. Political subdivision may request to be exempted from state merit system**

A political subdivision subject to the merit system under this chapter may file a request with the division and the director of the department of human services to be exempted from the merit system. The request must describe a plan and policy that assures the political subdivision has developed a merit system plan that meets federal standards for personnel administration. The division and the director of the department of human services shall authorize the political subdivision plan within sixty days of receiving a request under this section if the plan and policies meet federal requirements. If the division and the director of the department of human services determine that the proposed plan and policies fail to meet the federal requirements, the division and the director shall deny the request and notify the requester of the specific reasons for the denial.

*Added by L.2007, c. 479, § 1, eff. Aug. 1, 2007.*

Search this disc for cases citing this section.

Citation/Title

ND Code Sec. 54-44.3-32, Political subdivision merit system compliance

\*27408 N.D. Code § 54-44.3-32

**WEST'S NORTH DAKOTA CODE**  
**TITLE 54. STATE GOVERNMENT**  
**CHAPTER 54-44.3. CENTRAL PERSONNEL SYSTEM**

Current through the 2007 Regular Session of the 60th Legislative Assembly

**§ 54-44.3-32. Political subdivision merit system compliance**

The division and the department of human services shall develop oversight and audit procedures for political subdivision merit systems to assure compliance with federal merit system principles. If the division and the department of human services determine that a political subdivision has failed to maintain compliance with federal merit system principles, the division and the department shall notify the political subdivision of the noncompliance and order the political subdivision to take corrective action. If a political subdivision does not take the necessary corrective action to comply with federal merit system principles, the division and the department of human services shall revoke the political subdivision's exemption from the state merit system and return the political subdivision to the state merit system. The political subdivision is responsible for any penalty assessed by a federal authority for a noncompliant political subdivision merit system.

*Added by L.2007, c. 479, § 1, eff. Aug. 1, 2007.*

Search this disc for cases citing this section.



February 15, 2008

Board of County  
Commissioners

Scott Wagner  
Fargo, North Dakota

Vern Bennett  
Fargo, North Dakota

Ken Pawluk  
Fargo, North Dakota

Darrell W. Vanyo  
Fargo, North Dakota

Robyn Sorum  
Fargo, North Dakota

Laurie Sterioti Hammeren, Director  
North Dakota Human Resource Management Services  
600 East Boulevard Avenue Dept 113  
Bismarck ND 58505-0120

RE: NORTH DAKOTA ADMINISTRATIVE CODE 4-07(1-17)  
MERIT SYSTEM AMENDMENTS

Dear Ms. Sterioti Hammeren:

Cass County received a copy of a notice from your agency, the North Dakota Human Resource Management Services, which included proposed rules for the state merit system "opt out" legislation. As you know, SB 2321 (attached **Exhibit A**) was passed by the North Dakota Legislature in the last legislative session. These proposed administrative rules seek to implement that legislative goal.

Cass County has undertaken a thorough review of the amendments and is very disappointed by the proposed strategies in attempting to create a uniform personnel system in local government. Perhaps our county's assumption of creating a unified personnel system, reducing pay inequities, and ensuring equitable treatment for all of our employees was not the expectation of the legislature. The proposed rules clearly do nothing to achieve those stated objectives. In fact, Cass County will cite specific instances in the proposed administrative rules that will further divide the two systems.

**OVERVIEW**

Cass County, as well as all other counties in North Dakota, along with many states in the country, operates under the doctrine of "at-will employment". NDCC 34-03-01 states that "employment without a definite term is presumed to be at-will, and an at-will employee may be terminated with or without cause."

Social Service employees became a part of the state merit system under early provisions of the Code of Federal Regulations (CFR), Title 5, Volume 2, Subpart F. In earlier regulations, there was a specific requirement that stated in part, "the requirements provide that permanent employees will not be subject to separation except **for cause** or such reasons as curtailment of work or lack of funds."

Heather Worden  
Commission Assistant

Box 2806  
119 Ninth Street South  
Fargo, North Dakota 58108

701-241-5609  
Fax 701-241-5728  
www.casscountygov.com



Ms. Laurie Sterioti Hammeren  
February 15, 2008  
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This section, however, has been amended and now reads, "Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected." Based on this change in the federal regulations, of which I have attached a copy noted as **Exhibit B**, Cass County wishes to challenge the proposed rules and their processes as outlined.

Prior to the passage of SB 2321, conversations of record exist between our two agencies which reflect a difference of opinion on the interpretation of the federal regulations as noted in **Exhibit B**, which "recognizes fully the rights, powers, and responsibilities of state and local governments and encourages innovation and allows for diversity among state and local governments in the design, execution, and management of their systems of personnel administration, as provided by that Act." (Section 900.601(a))

#### **REQUEST FOR ATTORNEY GENERAL'S OPINION**

The Cass County Board of Commissioners would like to resolve this issue for the long term and would ask that your agency seek an Attorney General's opinion regarding this question. That conclusion will allow our county to decide, once and for all, whether using the "opt out" provisions established by state law will enable us to create one uniform compensation system.

#### **AT-WILL CONSIDERATIONS**

Our county policy manual has been reviewed on several occasions by three different legal firms in Fargo. Based on their advice, Cass County policy has never had a "probationary period". This eliminates any employee from believing that once you have completed your "job probation" that you have become a "permanent employee" and have a property interest in your job. Absent a separate employment contract, guaranteeing job security, all employment is presumed to be at-will, permitting the employer to discharge the employee for any reason, so long as no statute is violated. The only employee in Cass County Government who has a contract for employment is our Social Service Director, based on the existing merit system status.

In North Dakota, teachers generally enter into contracts with their school boards which in turn create a property right in their jobs. Government employees generally do not have contracts and no property rights to their jobs. In North Dakota, when Workforce Safety and Insurance (formerly Workers' Compensation Bureau) dropped out of the state merit system in 1995, they became and still remain "at-will" employees.



Ms. Laurie Sterioti Hammeren  
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Until this year, when the State of North Dakota took over administration of the Regional Child Support Enforcement Offices, half of the agencies were associated with State's Attorney Offices and were "at-will" employees and the other half were "for cause" employees because they fell under the umbrella of the Social Services agencies where they were located.

In a recent North Dakota case, *Forster v. West Dakota Veterinary Clinic & Kim Brummond, D.V.M.*, 2004 ND 207 (Nov. 4, 2004), the Supreme Court noted the familiar verbiage under NDCC 34-03-01, that "employment without a definite term is presumed to be at-will, and that an at-will employee may be terminated with or without cause." The only Cass County employees with a definite term are those who run for election every four years.

#### THE MERIT SYSTEM ISSUE

In the following section from the proposed changes, the regulations seek to define "probationary status" and "regular status". We find this contrary to our current system of operation and contrary to legal advice given to our county. Several other chapters in the state merit system follow, which include grievance procedures, employee appeals, and merit system principles which do not seem to mirror the principles in Federal Law, Section 900.603 Standards for a merit system of personnel administration (See Exhibit B).

*Subsections 4 and 5 of section 4-07-28-02 are amended as follows:*

**4-07-28-02. Definitions.** *The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3 except:*

4. *"Probationary status" means a category of employment that applies to an individual employed in a classified position, who was selected for a position on an open, competitive basis and who has not yet completed the initial six-month probationary period.*

5. *"Regular status" means a category of employment that applies to an individual employed in a classified position, who was selected for a position on an open, competitive basis and who has successfully completed the a six-month or longer probationary period.*

**History:** Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996;\_\_\_\_\_.

**General Authority:** NDCC 54-44.3

**Law Implemented:** NDCC 54-44.3

#### **COMMENTS ON SPECIFIC ISSUES**

While the scope of the merit system, as defined by these proposed amendments, is the overriding issue, many of the other proposed changes appear to be usurping the powers of county government and delivering unfunded mandates to local jurisdictions.

When we received the first amendments to Article 4-07 from your office, we made immediate calls to various public officials to inquire about the direction these policies were taking and two of the proposed amendments were subsequently withdrawn. We appreciate the quick response on reversing requirements on two new mandates. These mandates would have required local governments to accept transfers of accrued annual leave and accrued sick leave for all new merit system employees hired. Several similar sections have not been changed at the time of this writing, and we will make further comment on those sections as follows: (I, II and III)

I. Please note the proposed amendment for the annual leave section printed directly below this paragraph. The new regulations are changing a **recommended** annual leave schedule to a **required** leave schedule and removing the option of counties filing their own schedule with the human resource management services which would ensure that all county employees in a given county would be on the same annual leave schedule. If this change were accepted, employees working side by side would have different leave accumulations, which not only causes morale problems but extreme payroll difficulties.

*Section 4-07-12-04 is amended as follows:*

**4-07-12-04. Annual leave accrual schedule.** Agencies are advised that the following annual leave accrual schedule is recommended required for use by each agency subject to this chapter:

<u>Years of Service</u>	<u>Hours Earned Per Month</u>
zero through three	eight
four through seven	ten
eight through twelve	twelve
thirteen through eighteen	fourteen
over eighteen	sixteen

~~An agency adopting or using a different accrual schedule shall promptly file a copy of that schedule with human resource management services.~~

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

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

**Law Implemented:** NDCC 54-06-14, 54-44.3-12(1)

II. The following policy on annual leave and re-employment, without the proposed changes, mirrors the policy of Cass County. With the proposed change from one year to three years of service, we are now creating further inequities for Cass County employees.

*Section 4-07-12-12 is amended as follows:*

**4-07-12-12. Annual leave and reemployment.** An employee who leaves the employee's employment and who is rehired within ~~one year~~ three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate. ~~However, an employee affected by a reduction in force and rehired within two years must be credited with the employee's previous service for the purpose of determining the employee's annual leave accrual rate.~~

**History:** Effective September 1, 1992; amended effective

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

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



III. Cass County personnel policies include a reduction in force policy drafted by our county and approved through our legal review process. Our policy does not mandate the strict re-employment option that is designated below in the proposed amended policy.

*Section 4-07-11-07 is amended as follows:*

***4-07-11-07. Reemployment following a reduction-in-force.***

*An individual who has lost employment due to a reduction-in-force shall be offered reemployment by the former employing agency if all of the following conditions are present:*

- 1. A regular position vacancy, in the same classification or lower classification in the same series, occurs in the former employing agency, and the appointing authority decides to fill the vacancy by appointing someone other than a current employee.*
- 2. The individual meets the qualifications determined to be necessary for successful performance of the position by the agency and successfully completes any examination specified by the agency, including an oral interview.*
- 3. No more than one year has elapsed since the individual lost employment due to the reduction-in-force.*
- 4. The individual is not currently employed in a regular position in state service.*

***History:*** Effective May 1, 1994; amended effective July 1, 2004;\_\_\_\_\_.

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

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

## **ADDITIONAL AMENDMENTS**

The proposed amendments also contain several changes dealing with grievance procedures, appeal processes, and employment discrimination. Cass County personnel policies cover the same subject matter with different language. We believe that we fully comply with state and federal law with regard to these policies.

Ms. Laurie Sterioti Hammeren  
February 15, 2008  
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## SUMMARY

When SB 2321 was passed by the North Dakota legislature, Cass County believed the purpose was to allow counties the option to streamline their personnel systems. These proposed regulations do the opposite. Instead of focusing on areas of differences between county and state policy and working to solve those differences, these new policies create a much larger chasm.

We implore the members of this committee to reject the mandates as presented in the proposed amendments to Article 4-07 and attached as **Exhibit C**. Cass County's goal has always been the operation of an equitable compensation, personnel and payroll package for all employees. Carving out additional exceptions, policies and procedures for Social Service employees will not allow us to consider the "opt out" merit system legislation. We do not believe that was the intent of the legislature, nor is it in the best interest of local government.

If the proposed regulations pass as written, Cass County would have no choice but to continue with two separate employment systems...the at-will system with local policies and local compensation and the merit system for Social Service employees with state policies and state driven compensation.

Sincerely,



Ken Pawluk, Chairman  
On Behalf of the Board of Cass County Commissioners

cc: Cass County Commissioners  
Birch Burdick, State's Attorney  
Kathy Hogan, Cass County Social Service Director  
Bonnie Johnson, Cass County Administrator  
Mark Johnson, North Dakota Association of Counties  
Terry Traynor, North Dakota Association of Counties  
John Walstad, Legislative Council  
Cass County Legislators

Attachments: Exhibit A SB 2321  
Exhibit B Code of Federal Regulations  
Exhibit C Amendments to Article 4-07

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SUBJECT: REDUCTION IN FORCE POLICY

Revised: November 21, 1994

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Purpose: To set out the procedures to be followed in selecting positions and employees for reduction in force due to budgetary cutbacks, reorganization and redistribution of work.

The decisions of the Cass County Commission regarding where and how its resources (including personnel) will be used are necessarily management decisions. Decisions on reduction in force are made in the context of overall budget cuts and reallocation of work. The Cass County Commission, in consultation with the Personnel Overview Committee, will establish a list of governing principles to clarify the way in which the missions and duties of the County are to be maintained while making budget adjustments. The principles will help guide the decision-making process for a reduction in force by having identified the duties that need to be performed and eliminating less crucial tasks.

It is the policy of Cass County to conduct any reduction in force required by the budgetary need of the County or required by the reallocation of work assignments in a manner that does not discriminate against any employee in violation of existing North Dakota Human Rights Act and/or Federal Civil Rights laws. The following steps will be followed:

1. The Cass County Commission, in consultation with the Personnel Overview Committee, will identify the amount of budgetary reductions to be made in each of the departments. These reductions will identify, to the extent feasible and practical, the specific departmental services, programs and activities that will be reduced or discontinued. This information will be shared with all department heads affected.
2. The Cass County Commission will determine the amount of salaries and wages and the number of positions to be cut from each county department.
3. Prior to conducting a full reduction in force analysis, a Department Head may seek to find other county employment opportunities either in the department or within the county for employees whose positions are designated to be eliminated. These employees may be given opportunity to apply for positions for which they are qualified. If an employee whose position is being eliminated is offered another county employment opportunity and declined that offer, a reduction in force will not be implemented, but an individual severance plan could be developed for that employee.



4. The department head will submit a proposed plan to the Personnel Overview Committee consistent with the governing principles specifying how work will be reallocated or reorganized to meet statutory requirements and satisfy the salary reductions. These recommendations will specify what functions can be eliminated. These recommendations should include specific classifications of positions which could be eliminated or reduced under the reallocation or elimination of work. Analysis of employees for consideration in a reduction in force will be done by classification within each department.
5. If an employee is hired in a time-limited position, a grant-funded position for example, they will not be included in reduction in force analysis. Time-limited employees will also not be eligible for continued employment (RIF process) with the County at the completion of the time-limited positions.
6. An analysis of employees for consideration in a reduction in force will be done by classification within each department using the following guidelines:
  - a. An analysis of the acquired knowledge, demonstrated skills and versatility of employees compared to the work done and the available funding. Employees lacking the necessary skills and versatility should be considered for reduction.
  - b. An analysis of the levels of demonstrated documented work performance. Employees having documented consistently low levels of performance should be considered for reductions.
  - c. A review of the length of service of their employees. The review should list the number of years and months employees have been in the County and the number of years and months an employee has been in the current classification. Employees with the least number of years of service should be considered for reduction.
  - d. An analysis of the extent of required training needed to train a reassigned employee to full productivity in different positions. Employees requiring substantial retraining should be considered for reductions.

Prior to the analyzing of positions, the department head will identify any weighing of importance to be given each of the four factors. The analysis will be documented. If all staff of a program are proposed to be cut due to a decision to eliminate the program, the documentation of the analysis must still be completed.

All written documentation will be reviewed by the portfolio commissioner prior to submission to the Personnel Overview Committee. The Personnel Department shall provide technical assistance and consultation to department heads during the entire RIF process.

7. All departments' reduction in force plans shall be approved by the Cass County Commission.
8. Employees who are terminated pursuant to the reduction in force policy will be given a minimum of one month's notice and offered an individualized severance package. All severance packages must have full approval of the County Commission.

Severance packages would include at least one month's salary and health insurance. Severance packages will be based on years of service with one week of salary for every year of service up to six months.

#### OUTPLACEMENT SERVICES

Outplacement services are primarily available to those employees required to leave employment with the County due to no fault of their own. The County is willing to extend assistance to the employee upon his/her request, in making the transition from one position to another. Such services, unless otherwise indicated, may be provided prior to termination of employment and may take the form of the following:

1. Help in preparing, typing and photocopying employment resumes.
2. Typing and photocopying applications.
3. Use of telephone for job applications.
4. Referrals to other employers

Where applicable, ND Central Personnel Administrative Code applies to Social Service Employees and will take precedence over this policy.

**AMENDMENTS TO CHAPTER 4-07-11**

**REDUCTION-IN-FORCE**

Section 4-07-11-07 is amended as follows:

**4-07-11-07. Reemployment following a reduction-in-force.** An individual who has lost employment due to a reduction-in-force shall be offered reemployment by the former employing agency if all of the following conditions are present:

1. A regular position vacancy, in the same classification or lower classification in the same series, occurs in the former employing agency, and the appointing authority decides to fill the vacancy by appointing someone other than a current employee.
2. The individual meets the qualifications determined to be necessary for successful performance of the position by the agency and successfully completes any examination specified by the agency, including an oral interview.
3. No more than one year has elapsed since the individual lost employment due to the reduction-in-force.
4. The individual is not currently employed in a regular position in state service.

**History:** Effective May 1, 1994; amended effective July 1, 2004;\_\_\_\_\_.

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

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



## AMENDMENTS TO CHAPTER 4-07-12

## ANNUAL LEAVE

Section 4-07-12-04 is amended as follows:

**4-07-12-04. Annual leave accrual schedule.** State Agencies are advised that the following annual leave accrual schedule is ~~recommended~~ required for use by each state agency subject to this chapter:

<u>Years of Service</u>	<u>Hours Earned Per Month</u>
zero through three	eight
four through seven	ten
eight through twelve	twelve
thirteen through eighteen	fourteen
over eighteen	sixteen

~~An~~ A local government agency subject to the North Dakota merit system adopting or using a different accrual schedule shall promptly file a copy of that schedule with human resource management services.

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

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

**Law Implemented:** NDCC 54-06-14, 54-44.3-12(1)

Section 4-07-12-12 is amended as follows:

**4-07-12-12. Annual leave and reemployment.** An employee who leaves the employee's employment and who is rehired within ~~one year~~ three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate. ~~However, an employee affected by a reduction in force and rehired within two years must be credited with the employee's previous service for the purpose of determining the employee's annual leave accrual rate.~~

**History:** Effective September 1, 1992; amended effective \_\_\_\_\_.

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

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

**AMENDMENTS TO CHAPTER 4-07-28**

**MERIT SYSTEM EMPLOYMENT STATUS**

Subsections 4 and 5 of section 4-07-28-02 are amended as follows:

**4-07-28-02. Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3 except:

4. "Probationary status" means a category of employment that applies to an individual employed in a classified position, who was selected for a position on an open, competitive basis and who has not yet completed the initial ~~six-month~~ probationary period.
5. "Regular status" means a category of employment that applies to an individual employed in a classified position, who was selected for a position on an open, competitive basis and who has successfully completed the a six-month or longer probationary period.

**History:** Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; \_\_\_\_\_.

**General Authority:** NDCC 54-44.3

**Law Implemented:** NDCC 54-44.3

## AMENDMENTS TO CHAPTER 4-07-20

### GRIEVANCE PROCEDURES

Section 4-07-20-02.1 is amended as follows:

**4-07-20-02.1. Waiver of agency grievance procedure.** A waiver of the agency grievance procedure is allowed by mutual agreement of the employee and appointing authority. Each party must sign the waiver within fifteen working days of the employer action. Upon obtaining the waiver, the employee may appeal directly to human resource management services in accordance with section 4-07-20.1-08. An additional fifteen working days is not available if the requested waiver is denied.

**History:** Effective July 1, 2004; amended effective \_\_\_\_\_.

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

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



## AMENDMENTS TO CHAPTER 4-07-20.1

### APPEALS OF EMPLOYER ACTIONS

Section 4-07-20.1-05 is amended as follows:

**4-07-20.1-05. Waiver of agency grievance procedure.** A waiver of the agency grievance procedure is allowed by mutual agreement of the employee and appointing authority. The waiver must be signed by both parties within fifteen working days of the employer action. Upon obtaining the waiver, the employee may appeal directly to human resource management services in accordance with section 4-07-20.1-08. An additional fifteen working days is not available if the requested waiver is denied.

**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

Subsection 1 of section 4-07-20.1-08 is amended as follows:

**4-07-20.1-08. Procedure for appeal 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 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 actual notice. The agency shall prepare a certificate of mailing, a certificate of admission of delivery in person, or other reliable means, to show proof of the date of mailing or 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

A new chapter to Article 4-07 is created as follows:

**CHAPTER 4-07-34.1  
LOCAL COUNTY SOCIAL SERVICE MERIT SYSTEMS**

Section	
4-07-34.1-01	Scope of Chapter
4-07-34.1-02	Procedures for Establishing a Local County Social Service Merit System
4-07-34.1-03	Plan Approval
4-07-34.1-04	Merit Principles Requirements
4-07-34.1-05	Oversight and Audit Procedures
4-07-34.1-06	Non-compliance
4-07-34.1-07	Opt-back-in Procedures

**4-07-34.1-01. Scope of chapter.** This chapter applies to county social service agencies that have opted not to be covered by the North Dakota merit system, but are required to comply with the federal standards for a merit system of personnel administration.

**History:** Effective \_\_\_\_\_.  
**General Authority:** NDCC 54-44.3-12  
**Law Implemented:** NDCC 54-44.3-12

**4-07-34.1-02. Procedures for establishing a local county social service agency merit system.** A county board of commissioners or group of county boards in consultation with the social service board or boards that opts to establish a local merit system for the social service agencies shall develop a plan that includes policies and procedures that comply with the merit principles listed in section 4-07-34.1-04 and submit it to North Dakota human resource management services and the North Dakota department of human services for approval prior to implementation.

**History:** Effective \_\_\_\_\_.  
**General Authority:** NDCC 54-44.3-12  
**Law Implemented:** NDCC 54-44.3-12

**4-07-34.1-03. Plan approval.** North Dakota human resource management services shall establish an effective date authorizing a county board of commissioners or group of county boards merit system after approval of the county plan.

**History:** Effective \_\_\_\_\_.

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

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

**4-07-34.1-04. Merit principle requirements.** The following are the minimum merit system requirements that a county board of commissioners or group of county boards must address in its plan to establish a local merit system.

1. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
  - a. A standard employment application form;
  - b. An application review and ranking process, applicant notification, and procedure for appeals of disqualification;
  - c. Referral of applicants to interviewer based on applicant ranking;
  - d. Compliance with North Dakota Century Code chapter 37-19.1, Veterans' Preferences;
  - e. Job announcements for internal and external recruitment; and
  - f. Position changes including promotions, demotions, transfers, and reinstatements.
2. Providing equitable and adequate compensation.
  - a. A classification plan including class descriptions with minimum qualifications;
  - b. Individual job descriptions;
  - c. A salary administration plan with minimum salary range rates that are not less than the North Dakota state merit system compensation plan;
  - d. Identified working hours; and

- e. Leave policies including holidays; annual, sick, military, funeral, jury and witness; workers compensation; and family medical leave.
- 3. Training employees, as needed, to assure high quality performance.
- 4. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
  - a. A for cause employment standard must be used;
  - b. A performance management program including a minimum of an annual performance review;
  - c. A probationary period;
  - d. A corrective and disciplinary process including use of progressive discipline; and
  - e. Defined separations including pre-action process, dismissal, reduction-in-force, and expiration of appointment, including a formal appeal mechanism.
- 5. Assuring fair treatment of applicants and employees in all aspects of human resource administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or disability and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.
  - a. Policies including Americans with Disabilities Act, Fair Labor Standards Act, and Age Discrimination in Employment;
  - b. Compliance with federal and state equal employment opportunity and nondiscrimination laws including Title VI and Title VII of the Civil Rights Act of 1964 as amended, the North Dakota Human Rights Act, and the Public Employee Relations Act of 1985 as amended;
  - c. Grievance policy and procedure;
  - d. Appeals process to a neutral third party; and
  - e. Records management including personnel files, records retention, open records, and compliance with the Health Information Portability and Protection Act.



6. Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office, and compliance with the federal Hatch Act.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 14-02.4, 54-44.3-12

**Law Implemented:** NDCC 14-02.4, 54-44.3-12

**4-07-34.1-05. Oversight and audit procedures.** North Dakota human resource management services and the North Dakota department of human services human resource division shall jointly conduct periodic audits or oversight reviews of local county merit system policies, procedures, and practices to ensure compliance with the local county merit system plan and federal merit system principles.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 14-02.4, 54-44.3-12

**Law Implemented:** NDCC 14-02.4, 54-44.3-12

**4-07-34.1-06. Non-compliance.**

1. When a local county merit system is found to be out of compliance, the audit team shall recommend corrective action.
2. The county board of commissioners or group of county boards shall submit a corrective action plan within sixty days of receipt of the audit findings.
3. The county board of commissioners or group of county boards, North Dakota human resource management services, and the North Dakota department of human services shall negotiate a corrective action agreement within sixty days of receipt of the corrective action plan.
4. Upon approval of the corrective action plan, the county board of commissioners or group of county boards shall have an additional sixty days to implement the plan.
5. A follow-up audit shall be conducted within six months of the implementation date of the corrective action plan.
6. When a local county merit system is found to be out of compliance with the local county merit system plan and federal merit system principles after a follow-up audit, the county board of commissioners or group of county boards shall be required to be placed under the jurisdiction of the

North Dakota merit system. All programs and policies, including salaries, must be adjusted to be in compliance with the North Dakota merit system. Any federal penalties that result from the non-compliance shall be the responsibility of the county board of commissioners or group of county boards.

**History:** Effective \_\_\_\_\_.

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

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

**4-07-34.1-07. Opt-back-in procedures.** A county board of commissioners or group of county boards in consultation with the social service board or boards that opted out of the North Dakota merit system may opt back in the North Dakota merit system with the concurrence of North Dakota human resource management services and the North Dakota department of human services. All programs and policies, including salaries, must be adjusted to be in compliance with the North Dakota merit system.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 14-02.4, 54-44.3-12

**Law Implemented:** NDCC 14-02.4, 54-44.3-12

Code of Federal Regulations]

[Title 5, Volume 2]

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## **Subpart F--Standards for a Merit System of Personnel Administration**

Authority: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR part 557 (1971- 1975 Compilation).

Source: 48 FR 9210, Mar. 4, 1983, unless otherwise noted.

### **Sec. 900.601 Purpose.**

(a) The purpose of these regulations is to implement provisions of title II of the Intergovernmental Personnel Act of 1970, as amended, relating to Federally required merit personnel systems in State and local agencies, in a manner that recognizes fully the rights, powers, and responsibilities of State and local governments and encourages innovation and allows for diversity among State and local governments in the design, execution, and management of their systems of personnel administration, as provided by that Act.

(b) Certain Federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grant statutes and in other cases are required by regulations of the Federal grantor agencies. Title II of the Act gives the U.S. Office of Personnel Management authority to prescribe standards for these Federally required merit personnel systems.

### **Sec. 900.602 Applicability.**

(a) Sections 900.603-604 apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishment and maintenance of such systems. A reasonable number of positions, however, may be exempted from merit personnel system coverage.

(b) Section 900.605 applies to Federal agencies that operate Federal assistance or intergovernmental programs.

### **Sec. 900.603 Standards for a merit system of personnel administration.**

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as--

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.



#### **Sec. 900.604 Compliance.**

##### **(a) Certification by Chief Executives.**

- (1) Certification of agreement by a chief executive of a State or local jurisdiction to maintain a system of personnel administration in conformance with these Standards satisfies any applicable Federal merit personnel requirements of the Federal assistance or other programs to which personnel standards on a merit basis are applicable.
- (2) Chief executives will maintain these certifications and make them available to the Office of Personnel Management.
- (3) In the absence of certification by the chief executive, compliance with the Standards may be certified by the heads of those State and local agencies that are required to have merit personnel systems as a condition of Federal assistance or other intergovernmental programs.

##### **(b) Resolution of Compliance Issues.**

- (1) Chief executives of State and local jurisdictions operating covered programs are responsible for supervising compliance by personnel systems in their jurisdictions with the Standards. They shall resolve all questions regarding compliance by personnel systems in their jurisdictions with the Standards. Findings and supporting documentation with regard to specific compliance issues shall be maintained by the chief executive, or a personal designee, and shall be forwarded, on request, to the Office of Personnel Management.
- (2) The merit principles apply to systems of personnel administration. The Intergovernmental Personnel Act does not authorize OPM to exercise any authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.
- (3) When a chief executive requests the assistance of the Office of Personnel Management, the Office will provide consultation and technical advice to aid the State or local government in complying with the Standards.
- (4) The Office of Personnel Management will advise Federal agencies on application of the Standards in resolving compliance issues and will recommend actions to carry out the purposes of the Intergovernmental Personnel Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

[48 FR 9210, Mar. 4, 1983; 48 FR 10801, Mar. 15, 1983, as amended at 62 FR 33971, June 24, 1997; 62 FR 53223, Oct. 14, 1997]

#### **Sec. 900.605 Establishing a merit requirement.**

Federal agencies may adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program only with the prior approval of the Office of Personnel Management. All existing regulations will be submitted to the Office of Personnel Management for review.

#### **Appendix A to Subpart F--Standards for a Merit System of Personnel Administration**

**Part I:** The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.



## **Program, Legislation, and Statutory Reference**

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, Section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Grants to States for Old-Age Assistance for the Aged (Title I of the Social Security Act); 42 U.S.C. 302(a)(5)(A). (\*1)

Aid to Families with Dependent Children, (Title IV-A of the Social Security Act); 42 U.S.C. 602(a)(5). (\*2)

Grants to States for Aid to the Blind, (Title X of the Social Security Act); 42 U.S.C. 1202(a)(5)(A). (\*1)

Grants to States for Aid to the Permanently and Totally Disabled, (Title XIV of the Social Security Act); 42 U.S.C. 1352(a)(5)(A). (\*1)

Grants to States for Aid to the Aged, Blind or Disabled. (Title XVI of the Social Security Act); 42 U.S.C. 1382(a)(5)(A). (\*1)

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended, section 1902(a)(4)(A); 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1976, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Federal Payments for Foster Care and Adoption Assistance, (Title IV-E of the Social Security Act); 42 U.S.C. 671(a)(5).

**Part II:** The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

## **Program, Legislation, and Regulatory Reference**

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5196b), as amended; 44 CFR 302.4.

[62 FR 33971, June 24, 1997]

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(\*1) *Public Law 92-603 repealed Titles I, X, XIV and XVI of the Social Security Act effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."*

(\*2) *Public Law 104-193 repealed the Aid to Families with Dependent Children program effective July 1, 1997.*