

AMENDMENTS TO ARTICLE 4-07

ORGANIZATION OF HUMAN RESOURCE MANAGEMENT SERVICES

Chapter

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AMENDMENTS TO CHAPTER 4-07-05

RECRUITMENT AND SELECTION

Subsection 10 of section 4-07-05-08 is created as follows:

4-07-05-08. Vacancy announcement contents. Each vacancy announcement must include the following information:

1. Class or working title.
2. Position number.
3. Salary or projected hiring range.
4. Closing date.
5. Duty location of position (city).
6. Procedures for applying.
7. Summary of work.
8. Minimum qualifications and special requirements.
9. Whether recruitment is internal or external.
10. Status:
 - a. Full-time or part-time; and
 - b. Regular or temporary

Additional preferred qualifications may be listed on the vacancy announcement at the discretion of the appointing authority, or a reference to the position description may be made.

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

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

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)

Section 4-07-12-13 is amended as follows:

4-07-12-13. Assumption of accrued annual leave. ~~An~~ A state agency appointing authority employing an individual from another state agency ~~may~~ shall accept all or only a part of the employee's accrued annual leave hours the employee requests to transfer. ~~Agencies~~ State agencies covered by the North Dakota merit system ~~may~~ shall accept all or a part of accrued annual leave hours the employee requests to transfer of a county social service board employee in a position classified by human resource management services.

A county social service board may accept all or a part of accrued annual leave hours an employee requests to transfer from another county social service board or a state agency, if the employee occupies a position classified by human resource management services.

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

General Authority: NDCC 54-44.3-12

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

AMENDMENTS TO CHAPTER 4-07-13

SICK LEAVE

Section

4-07-13-01	Scope of Chapter
4-07-13-02	Definitions
4-07-13-03	Sick Leave Accrual
4-07-13-04	Sick Leave Accrual Rate
4-07-13-05	Accrual for Fractional Months
4-07-13-06	No Limit on Sick Leave Carryover
4-07-13-07	Uses of Sick Leave
4-07-13-08	Sick Leave Taken in Increments [Repealed]
4-07-13-09	Sick Leave and Pregnancy [Repealed]
4-07-13-10	Temporary or Emergency Employment
4-07-13-11	Sick Leave and Reemployment
4-07-13-12	Assumption of Accrued Sick Leave

Section 4-07-13-04 is amended as follows:

4-07-13-04. Sick leave accrual rate. State Agencies are advised that the following sick leave accrual schedule is ~~recommended~~ required for use by each state agency subject to this chapter:

Years of Service

Hours Earned Per Month

zero to all

eight

~~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 4-07-13-10 is amended as follows:

4-07-13-10. Temporary ~~or~~ emergency employment. A temporary ~~or~~ emergency employee may not be credited with any accrued sick leave hours.

History: Effective September 1, 1992; amended effective_____.

General Authority: NDCC 54-44.3-12

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

Section 4-07-13-12 is amended as follows:

4-07-13-12. Assumption of accrued sick leave. An A state agency appointing authority employing an individual from another state agency shall accept all of the employee's accrued sick leave hours. ~~Agencies~~ State agencies covered by the North Dakota merit system ~~may~~ shall accept all accrued sick leave hours of a county social service ~~board~~ employee in a position classified by human resource management services.

A county social service board may accept all of accrued sick leave hours an employee requests to transfer from another county social service board or a state agency, if the employee occupies a position classified by human resource management services.

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

General Authority: NDCC 54-44.3-12

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

AMENDMENTS TO CHAPTER 4-07-18

SERVICE AWARD PROGRAMS

Section 4-07-18-04 is amended as follows:

4-07-18-04. Length of service required to receive award. An employee must have completed three, five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, or fifty years of employment with the state in order to receive a service award. An employee who leaves employment with the state and then returns, again begins to accumulate time. That time must be added to the employee's previous service and applied to any future service award.

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

General Authority: NDCC 54-44.3-12

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

Section 4-07-18-05 is amended as follows:

4-07-18-05. Service award types. The types of service awards that are given to employees must be provided as follows:

1. Following the completion of three years; certificate or plaque, and a gift not to exceed a value of twenty-five dollars.
- ~~12.~~ Following the completion of five years; certificate or plaque, and a gift not to exceed a value of ~~twenty-five~~ fifty dollars.
- ~~23.~~ Following the completion of ten years; certificate or plaque, and a gift not to exceed a value of ~~fifty~~ one hundred dollars.
- ~~34.~~ Following the completion of fifteen years; certificate or plaque, and a gift not to exceed a value of ~~seventy-five~~ one hundred fifty dollars.
- ~~45.~~ Following the completion of twenty years; certificate or plaque, and a gift not to exceed a value of two hundred dollars.
- ~~56.~~ Following the completion of twenty-five years; certificate or plaque, and a gift not to exceed a value of two hundred ~~twenty-five~~ fifty dollars.
- ~~67.~~ Following the completion of thirty years; certificate or plaque, and a gift not to exceed a value of ~~two hundred fifty~~ three hundred dollars.

78. Following the completion of thirty-five years; certificate or plaque, and a gift not to exceed a value of ~~two hundred seventy-five~~ three hundred fifty dollars.
89. Following the completion of forty years; certificate or plaque, and a gift not to exceed a value of three four hundred dollars.
910. Following the completion of forty-five years; certificate or plaque, and a gift not to exceed a value of four hundred fifty dollars.
1011. Following the completion of fifty years and every five-year increment thereafter; certificate or plaque, and a gift not to exceed a value of five hundred dollars.

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

General Authority: NDCC 54-44.3-12

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

AMENDMENTS TO CHAPTER 4-07-20
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

AMENDMENTS TO CHAPTER 4-07-20.2

APPEALS OF DISCRIMINATION

Section

4-07-20.2-01	Scope of Chapter
4-07-20.2-02	Definitions
4-07-20.2-03	Statutory Definitions
4-07-20.2-04	Applicants or Regular Employees May Appeal Discrimination in Employment
<u>4-07-20.2-04.1</u>	<u>Procedure for Applicant Appeals of Discrimination in Employment to Agency Appointing Authority</u>
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 Appeal to Human Resource Management Services

Section 4-07-20.2-04.1 is created as follows:

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

1. An applicant who has completed a timely and properly completed application for a position within an agency and who alleges discrimination in employment shall file a written appeal to the agency appointing authority. The letter of appeal must specify what alleged discriminatory action against the applicant was taken by the agency. The appeal information must be delivered, mailed, or transmitted by facsimile and must be received in the office of the agency appointing authority by five p.m. within fifteen working days of the alleged discriminatory 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 subsection 4-07-20.2-07.

History: Effective _____.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

Section 4-07-20.2-07 is amended as follows:

4-07-20.2-07. 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 or admission of delivery in person, or other reliable means to show proof of the date of mailing or actual delivery. ~~An applicant shall file the appeal form by delivery, mail, or transmittal by facsimile, and the form must be received in the human resource management services office by five p.m. within fifteen working days of the alleged discriminatory action.~~
2. An applicant shall file the appeal form by delivery, mail, or transmittal by facsimile, 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 action. 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 or admission of delivery in person, or other reliable means to show proof of the date of mailing or actual delivery.
3. 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.
34. 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.

45. 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.
56. 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.
67. 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.
78. 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.
89. The administrative law judge shall return the completed appeal file to human resource management services.
910. 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;_____.

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

Law Implemented: NDCC 54-44.3-12.2

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

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

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

**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 _____.

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, within budgetary constraints, be paid for by the agency or reimbursed to the employee in accordance with agency policy.

History: Effective _____.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12