



HUMAN RESOURCE MANAGEMENT SERVICES

STATE OF NORTH DAKOTA

Laurie Sterioti Hammeren, SPHR
Director

Administrative Rules Committee Hearing Testimony of Laurie Sterioti Hammeren, SPHR, Director Human Resource Management Services Division of Office of Management and Budget June 10, 2010

Chairman Klein and Committee Members:

Following please find my written testimony concerning the adoption of administrative rules by the Human Resource Management Services Division (HRMS) of Office of Management and Budget (OMB). The items listed are pursuant to Mr. John Walstad's (Code Revisor for the Legislative Council) request.

1. **Statutory Changes:** The Legislative Assembly passed the following bills:

HB 1029 of which Section 2 specified that an employee who receives employer-paid tuition who leaves employment with that employer within two years of receiving the tuition must repay tuition on a prorated basis. N.D. Admin. Code § 4-07-36-02 implements this change.

HB 1030 provides that a state employee may receive a \$1000 maximum bonus each fiscal year as opposed to each biennium. Under special circumstances, HRMS may approve bonuses to more than 25% of an agency's staff; these exceptions must be reported to the budget section. N.D. Admin. Code § 4-07-02-21 provides the clarification as to the special circumstances for which performance bonuses could be approved above the 25% limitation.

HB 1113 requires agencies to have grievance procedures and allows applicants and probationary employees to appeal discrimination or reprisal. N.D. Admin. Code § 4-07-20-02 specifies this requirement, and clarifies the date of notice as well as notice by electronic means. Proof of notice helps to establish timeliness of grievances and appeals. N.D. Admin. Code ch. 4-07-20.1 and ch. 4-07-20.2 address appeals of employer actions and appeals of discrimination and reprisal.

SB 2143 specifies that employees must exercise their internal grievance process to completion before commencing another action. N.D. Admin. Code ch. 4-07-20, ch. 4-07-20.1, and ch. 4-07-20.2 all address completion of the internal process prior to an appeal.

SB 2267 specifies that non-classified employees claiming reprisal may appeal to HRMS. An employee may also file a complaint with the Labor Department. N.D. Admin. Code § 4-07-20.2-01 applies to employees not in the classified service who appeal a claim of reprisal under N.D.C.C. § 34-11.1-04(5).

2. **Federal Changes:**

The Fair Labor Standards Act of 1938 29 CFR. § 541.602(5) specifies that for an exempt employee the appointing authority may make deductions from pay for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Previously exempt employees, if disciplined, needed to be suspended for at

least a week in order not to lose their exempt status from the overtime provisions of the FLSA.

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Genetics was added as a protected category under discrimination consistent with the federal changes to Title VII of the Civil Rights Act of 1964.

3. Procedure: The rule making procedure consisted of the following:

- December 17, 2009 - Met with rules task force to finalize proposed changes/additions. Task force consists of HR representatives from DOT, Health, Tax, DOCR, DHS.
- December 17, 2009 - Proposed rules reviewed with a representative of OAH to verify appeals process.
- January 13, 14, 15, 19, 26, 28, 29, 2010 - Draft rules reviewed with various agencies, officials and HR contacts.
- January 29, 2010 - Met with Ryan Bernstein, Office of the Governor Legal Council, regarding draft rules.
- January 29, 2010 - Sent draft rules to Michael Wilma, Assistant Attorney General, for technical review.
- February 1, 2010 - Sent final draft to key HR contacts.
- February 4, 2010 - Prepared a small entity regulatory analysis, including a statement that a regulatory analysis, economic impact statement, and takings assessment were not required.
- February 8, 2010 - Sent Full Notice of Intent and one copy of the rules to the Legislative Council.
- February 8, 2010 - Sent Abbreviated Notice of Intent to the North Dakota Newspaper Association requesting that the notice be published in each official ND county newspaper.
- February 8, 2010 - Placed Notice of Intent, copy of rules, and summary of changes on HRMS website.
- February 9, 2010 - Notified the following groups that a copy of the rules and full notice to Legislative Council is available on-line: HR contacts, Agency Directors, HR Staff, Council of State Employees, North Dakota Public Employees Association, APT Inc., County Directors Association Personnel Committee, Association of Counties, Employee Benefits Committee, Legislative Council, State Personnel Board, Assistant AG, OAH, OMB, Office of the Governor.
- February 14-20, 2010 - Rules were published in 52 official ND newspapers.
- March 15, 2010 - Conducted public hearing.
- March 25, 2010 - Allowed 10 day comment period.
- March 26, 2010 - Prepared a written record of the agency's consideration of all comments.
- March 25, 2010 - Submitted final proposed rules to OMB Director and Office of the Governor.
- March 31, 2010 - Submitted proposed rules and related materials to the Attorney General for an opinion on their legality.
- April 26, 2010 - Submitted rules to the State Personnel Board for adoption.
- April 28, 2010 - Submitted Attorney General's Opinion, the rules, written comments, and summary of the oral comments to the Legislative Council.

- May 26, 2010 - Legislative Council notified interested parties of the Administrative Rules Committee hearing.
- June 10, 2010 - Administrative Rules Committee hearing conducted.
- July 1, 2010 - If approved by the Committee, Rules become effective.

- 4. Oral and Written Comments:** Five people were in attendance at the public hearing. No one testified; however, individuals did ask questions about the rules and clarification was given. Two e-mails were received prior to the hearing. Written comments were received from one agency. A chart was prepared to clarify grievances and appeals. See addendum pages 1-14 for a summary and consideration of comments explaining our rationale and action for either modifying the proposed rules or leaving them as proposed.

The following rules received comments:

<u>N.D. Admin. Code</u>	<u>Description</u>	<u>Page</u>	<u>Change Status</u>
§ 4-07-02-21	Performance Bonus	3	No change
§ 4-07-20.1-02	Applicant	6	No change
§ 4-07-20.1-02	Applicant/Employee Assistance	6	Modified
ch. 4-07-20.2	Appeal rights	9-13	No change
§ 4-07-20.2-01	Genetics	9	No change
§ 4-07-20.2-07	Facsimile	11	Modified
§ 4-07-36-02	Tuition repayment	14	No change

- 5. Cost:** The approximate cost of giving public notice was \$1573. This does not include staff time for developing and adopting the rules.

6. Justification of Changes to N.D. Admin. Code:

- § 4-07-02-21 (page 3): Under special circumstances, HRMS may approve bonuses to more than 25% of an agency's staff; these exceptions must be reported to the budget section. This section provides the clarification as to the special circumstances for which performance bonuses could be approved above the 25% limitation.
- § 4-07-19-04.1 (page 4): This change was made to comply with the Fair Labor Standards Act 29 CFR § 541.602(5). An employee exempt from overtime may have pay deductions of one or more full days for infractions of workplace conduct rules.
- § 4-07-20-02 (page 5): The purpose of this change is to eliminate ambiguity regarding timeliness of grievances and appeals by better defining the "date of service" of the notice and including notice by electronic means.
- § 4-07-20.1-02 (page 6): The purpose of this amendment is to eliminate ambiguity in the rules by providing a definition for "Date of Service". In addition, HB 1113 requires agencies to have grievance procedures and allows both applicants and probationary employees to appeal discrimination or reprisal. Applicant was added to the definition of reprisal. This provides the agency an opportunity to internally address appeals of reprisal by an applicant rather than requiring outside legal action, thus being more cost effective for the State. However, since an applicant cannot request timely assistance under the Employee Assistance Program which is a program limited to employees, the definition of "Reprisal" was further modified, as suggested by the Department of Mineral Resources, to clarify this point.
- § 4-07-20.1-04 (page 7): The purpose of this amendment is to again clarify "date of service" in the grievance procedure process and to include electronic means. In addition, a provision was added to allow time limitations to be waived for "good cause" such as

when circumstances that reasonably and without any fault on the part of the grievant prevented the filing of a grievance in a timely fashion. The "good cause" provision was added in case of a major event like a pandemic or the Grand Forks flood.

- § 4-07-20.1-08 (page 7): The purpose of this amendment is to allow electronic means for receipt of appeals.
- § 4-07-20.2-01 (page 9): The scope of this chapter clarifies that this chapter implements HB 1113 which applies to probationary employees in the classified service who want to appeal reprisal or discrimination. By including probationary employees, agencies have a mechanism to consider appeals of discrimination or reprisal by them to avoid outside and more costly litigation. In addition, "genetics" was added to the list of covered protections in accordance with the Genetic Information Nondiscrimination Act of 2008 and the Civil Rights Act of 1964, as amended. These acts protect applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.
- § 4-07-20.2-01.1 (page 9): This proposed rule implements SB 2267 which provides that non-classified employees claiming reprisal under N.D.C.C. § 34-11.1-04(5) may appeal to HRMS. An employee may also file a complaint with the Labor Department.
- § 4-07-20.2-02 (page 9): The purpose of this amendment is to eliminate ambiguity in the rules by providing a definition for "Date of Service".
- § 4-07-20.2-03 (page 10): The purpose of this amendment is to eliminate ambiguity in the rules by citing the reference to N.D.C.C. § 34-11.1-04 in accordance with SB 2267.
- § 4-07-20.2-04 (page 10): This proposed amendment implements HB 1113 which applies to probationary employees in the classified service who want to appeal reprisal or discrimination. The "genetic" protection as previously explained was added.
- § 4-07-20.2-04.1 (page 10): The amendment to this section in accordance with HB 1113 outlines the procedure for an applicant for a classified position to appeal reprisal. "Electronic means" was also added.
- § 4-07-20.2-05 (pages 10-11): This amendment provides clarification that a probationary employee must complete an agency's grievance process prior to appealing discrimination or reprisal action in accordance with SB 2143. The agency appointing authority may for "good cause" waive the time limitations for filing a grievance.
- § 4-07-20.2-06 (page 11): This proposed amendment eliminates ambiguity in the rules by clarifying that both probationary and regular employees may request a waiver of an agency grievance procedure for alleged discriminatory or reprisal action.
- § 4-07-20.2-07 (pages 11-13): The proposed amendment clarifies the procedure for appeals of discrimination or reprisal to HRMS by probationary or regular employees. Electronic means was added. A new paragraph explaining that non-classified employees may appeal claims of reprisal through the HRMS appeal process in accordance with SB 2267 was added. All paragraphs were renumbered.
- § 4-07-36-02 (page 14): The proposed amendment implements HB 1029 which requires that an employee who leaves a state agency within two years of receiving tuition reimbursement must repay the tuition on a prorated basis.

7. Regulatory Analysis: No regulatory analysis is required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

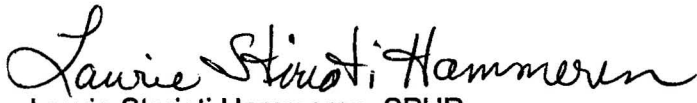
8. Small Entity Regulatory Analysis and Impact Statement: No economic impact statement was required for HRMS because none of the proposed rules will have an adverse economic impact on small entities.

9. Constitutional Takings Assessment: No takings assessment for HRMS was required because the HRMS rules do not limit the use of private real property.

10. Emergency Rules: None of the rules changes were emergency rules.

Thank you for consideration of the Human Resource Management Services Division' rule changes.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Sterioti Hammeren".

Laurie Sterioti Hammeren, SPHR
Director

North Dakota Human Resource Management Services
600 East Boulevard Ave., Department 113
Bismarck, ND 58505-0120

www.nd.gov/hrms
lhammeren@nd.gov
Tele: 328-4735; Fax: 328-1475

**Public Comments Through March 25, 2010, on Proposed Rules Relating to
ND Human Resource Management Services, Article 4-07**

1. Notifications on the public hearing and availability of proposed rules were publicized in 52 official ND newspapers, beginning 2/14/10 and ending 2/20/10, and mailed to agency HR contacts, State Personnel Board members, HRMS staff, OMB Director, and the Governor's Office.
2. The proposed rules were provided to the public on request and made available on ND Human Resource Management Services' website at www.nd.gov/hrms.
3. The public hearing was conducted on March 15, 2010, at the Capitol with five people in attendance. No one testified; however, individuals did ask questions about the rules.

Written Comments:

Attachment 1 – E-mail from Steve McCallum, ITD, dated 2-9-10

Attachment 2 – E-mail from Nancy Jo Bateman, ND Beef Commission, dated 2-9-10

Attachment 3 – Document from Dept. of Mineral Resources, dated 3-25-10

Attachment 4 – Chart describing grievances and appeals

Legend to Status – Considerations by Human Resource Management Services:

- A – The public comment was considered and the proposed rule was revised or a recommended new rule was adopted in 'acceptance' of the comment or recommendation.
- P – The public comment was considered and the proposed rule was 'partially' revised or a recommended new rule was 'partially' adopted to reflect the comment or recommendation.
- N – The public comment was considered, but the proposed rule was 'not' revised or a recommended new rule was 'not' adopted to reflect the comment or recommendation.
- NA – The public comment, such as a question or remark, was not expressed to change a proposed rule or the comment is 'not applicable' due to other action taken on that rule or another rule.

Note: Some public comments have been clarified or paraphrased.

Section	Change	Oral and/or Written Comments	Status/Disposition
Chapter 4-07-02 SALARY ADMINISTRATION PROCEDURES			
4-07-02-21 Performance Bonus	<ul style="list-style-type: none"> Agencies may approve performance bonuses above the 25% limitation in special circumstances. Three examples of special circumstances are identified in the rules. 	<ul style="list-style-type: none"> Dept. of Mineral Resources supports this section and they feel it is important that all employees have an opportunity to be rewarded for exceptional performance and the three special circumstances stated in the proposed rule will offer that opportunity. 	<ul style="list-style-type: none"> NA – Comment expressed only.
Chapter 4-07-19 DISCIPLINARY ACTIONS			
4-07-19-04.1 Suspension Without Pay	<ul style="list-style-type: none"> To comply with the provisions of the Fair Labor Standards Act, an employee exempt from overtime may have pay deductions of one or more full days for infractions of workplace conduct rules. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
Chapter 4-07-20 GRIEVANCE PROCEDURES			
4-07-20-02 Requirements for Grievance Procedures	<ul style="list-style-type: none"> The date of service was defined in the internal grievance procedure. Notice of electronic means was included. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">

Section	Change	Oral and/or Written Comments	Status/Disposition
Chapter 4-07-20.1 APPEALS OF EMPLOYER ACTIONS			
4-07-20.1-02 Definitions	<ul style="list-style-type: none"> The word "applicant" was added in the definition of "reprisal." The "date of service" was added as a definition. 	<ul style="list-style-type: none"> Why was "applicant" included in appeal of reprisal? Dept. of Mineral Resources questioned how applicants relate to employee assistance programs. 	<ul style="list-style-type: none"> NA – To provide the agency an opportunity to address appeals of reprisal by an applicant rather than requiring outside legal action. A – Since an applicant cannot request timely assistance under the Employee Assistance Program, the rule was modified to clarify this point.
4-07-20.1-04 Commencement of Agency Grievance Procedure – Time Limitations	<ul style="list-style-type: none"> The "date of service" was clarified in the grievance procedure process. Time limitations may be waived for good cause. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
4-07-20.1-08 Procedures for Appeals of Employer Actions to Human Resource Management Services	<ul style="list-style-type: none"> Electronic means was included for receipt of appeals. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">

Section	Change	Oral and/or Written Comments	Status/Disposition
Chapter 4-07-20.2 APPEALS OF DISCRIMINATION OR REPRISAL			
4-07-20.2 Appeals of Discrimination or Reprisal	<ul style="list-style-type: none"> The chapter applies to applicants and probationary employees or regular employees appeal rights regarding discrimination or reprisal. 	<ul style="list-style-type: none"> The Dept. of Mineral Resources proposes that HRMS provide documentation clarifying the appeal rights available to each employee status. 	<ul style="list-style-type: none"> N – The administrative rules do provide definitions of the various statuses for employees. In addition, HRMS had established a chart to clarify who may appeal the various types of employer actions, including discrimination, reprisal, or other employer actions. This chart will be posted on HRMS' website.
4-07-20.2-01 Scope of Chapter	<ul style="list-style-type: none"> The scope of chapter now also applies to probationary employees in the classified service, who want to appeal reprisal or appeal discrimination. Genetics was added as a protected category under discrimination employment consistent with the federal changes to Title VII of the Civil Rights Act of 1964. 	<ul style="list-style-type: none"> A request came in to explain what genetics means. 	<ul style="list-style-type: none"> NA – Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay fringe benefits, job training, classification, referral, and other aspects of

Section	Change	Oral and/or Written Comments	Status/Disposition
		<ul style="list-style-type: none"> Why was “probationary employees” included in this chapter? 	<p>employment. GINA also restricts employers’ acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.</p> <ul style="list-style-type: none"> NA – This provides a mechanism for agencies to consider appeal of discrimination or reprisal by probationary employees to avoid outside litigation.
4-07-20.2-01.1 Employees Not in the Classified Service May Appeal Claims of Reprisal	<ul style="list-style-type: none"> Nonclassified employees may appeal reprisal through the HRMS appeal mechanism. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
4-07-20.2-02 Definitions	<ul style="list-style-type: none"> Added definition of date of service. 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
4-07-20.2-03 Statutory Definitions	<ul style="list-style-type: none"> Included reference to N.D.C.C. § 34-11.1-04(5) 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">

Section	Change	Oral and/or Written Comments	Status/Disposition
4-07-20.2-04 Applicants, Probationary Employees, or Regular Employees May Appeal Reprisal or Discrimination in Employment	<ul style="list-style-type: none"> • Probationary employees may appeal reprisal and discrimination. • Genetics was added as a protected category. 	•	•
4-07-20.2-04.1 Procedure for Applicant Appeals of Discrimination or Reprisal in Employment to Agency Appointing Authority	<ul style="list-style-type: none"> • Clarification regarding applicants for classified positions may appeal discrimination or reprisal. • Appeals may be delivered through electronic means. 	•	•
4-07-20.2-05 Completion of Agency Grievance Process Prior to Appeal to Human Resource Management Services	<ul style="list-style-type: none"> • Clarification that a probationary employee must complete an agency's grievance process prior to appealing discrimination or reprisal action. • The agency appointing authority may waive the time limitations for filing a grievance for good cause. 	•	•
4-07-20.2-06 Waiver of Agency Grievance Procedure	<ul style="list-style-type: none"> • Clarification that a waiver of an agency grievance procedure is allowed by probationary or regular employees when alleging discrimination or reprisal action. 	•	•
4-07-20.2-07 Procedure for Appeals	<ul style="list-style-type: none"> • A probationary or regular employee may file appeals of discrimination or reprisal to HRMS. 		

Section	Change	Oral and/or Written Comments	Status/Disposition
	<ul style="list-style-type: none"> Electronic means was also added. A paragraph explaining that nonclassified employees may appeal claims of reprisal through the HRMS appeal process. 	<ul style="list-style-type: none"> Why would we use "facsimile" when the rest of the document refers to "electronic means." 	<ul style="list-style-type: none"> A – This was an oversight and a correction was made to state "electronic means."
<p align="center">Chapter 4-07-36 TRAINING AND TUITION REIMBURSEMENT</p>			
<p>4-07-36-02 Payment of Training and Tuition</p>	<ul style="list-style-type: none"> An employee who leaves a state agency within two years of receiving tuition reimbursement must repay the tuition on a prorated basis. 	<ul style="list-style-type: none"> The Dept. of Mineral Resources supports the addition of this section. 	<ul style="list-style-type: none"> NA

Sterioti Hammeren, Laurie

From: Sterioti Hammeren, Laurie
Sent: Tuesday, February 09, 2010 11:19 AM
To: Vosberg, Maureen R.
Subject: RE: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

Thanks..It was an oversight and should be "electronic means"...appreciate the good eye!!

Laurie Sterioti Hammeren, SPHR, Director
ND Human Resource Management Services
600 East Boulevard Avenue, Dept. 113
Bismarck, ND 58505-0120
Tele: (701) 328-4735
Fax: (701) 328-1475
Web: www.nd.gov/hrms

From: Vosberg, Maureen R.
Sent: Tuesday, February 09, 2010 11:07 AM
To: Sterioti Hammeren, Laurie
Subject: FW: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

Maureen Vosberg
ND Human Resource Management Services
600 E. Boulevard Ave., Dept. 113
Bismarck ND 58505-0120
Phone: (701) 328-3293
Fax: (701) 328-1475
Web: www.nd.gov/hrms

From: Miller, Shelly R.
Sent: Tuesday, February 09, 2010 10:32 AM
To: Vosberg, Maureen R.
Subject: FW: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

Maureen,

Below is a comment I received from one of our employees regarding the proposed changes to the Admin. Code. Just sharing for informational purposes.

Shelly Miller
701-328-2656

From: McCallum, Steve R.
Sent: Tuesday, February 09, 2010 10:21 AM
To: Miller, Shelly R.
Subject: FW: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

Why would they use the word "facsimile" in this new paragraph on page 12? They've changed the rest of the document to read "electronic means". I really wish that my typing was as good as theirs but every once in awhile these things just look wrong when I'm reading them!

Thanks

3. An employee in a non classified position may appeal claims of reprisal by filing the properly completed prescribed appeal form with the director, human resource management services. The appeal form must be delivered, mailed, or transmitted by facsimile and must be received in the human resource management services office by five p.m. within fifteen working days of service of the notice of results of the agency grievance procedure, or within fifteen working days of the date of the reprisal action if an agency does not have an established grievance process. When an employee is using an agency internal grievance procedure, the date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by **electronic means**, or hand

Steve McCallum

Programming Team Lead - Software Development

Information Technology Department

(701) 328-7421

<mailto:smccallum@nd.gov>

From: -Grp-ITD Human Resources

Sent: Tuesday, February 09, 2010 10:05 AM

To: -Grp-ITD All Email Users

Subject: FW: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

ITD Employees,

Please see notice below.

Human Resources

From: Vosberg, Maureen R. **On Behalf Of** Sterioti Hammeren, Laurie

Sent: Tuesday, February 09, 2010 9:50 AM

To: -Grp-HRMS HR Contacts; -Grp-ND Agency Directors; Franzen, Kirsten R.; Sharp, Pamela K.; Bernstein, Ryan; Nelson, Jeffrey N.; Walstad, John M.; Fetch, Bonny M.; Traynor, Terry O.; Novak, Twila H.; 'stuart@ndpea.org'; 'ktupa@aptnd.com'; Flagg, Marshall W.; Horter, Chuck; Sterioti Hammeren, Laurie; Alexander, Shelly L.; Bachmeier, Karla M.; Harasym, Jacki L.; Link, Jody L.; Nelson, Betty L.; Roehrick, Mike L.; Rosenkranz, Rebecca J.; Schroeder, Stephan A.; Wuitschick, Marcie D.

Subject: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

ABBREV. NOTICE OF INTENT

TO ADOPT & AMEND ADMINISTRATIVE RULES

relating to human resource issues in State government.

ND Human Resource

Management Services (HRMS)

Sterioti Hammeren, Laurie

From: Sterioti Hammeren, Laurie
Sent: Tuesday, February 09, 2010 11:30 AM
To: 'Nancy Jo Bateman'
Cc: -Grp-HRMS All Staff; -Grp-HRMS HR Contacts; Traynor, Terry O.; Franzen, Kirsten R.
Subject: RE: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

Great Question- I should have thought to give more information. Thanks for asking.

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

Laurie Sterioti Hammeren, SPHR, Director
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600 East Boulevard Avenue, Dept. 113
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Fax: (701) 328-1475
Web: www.nd.gov/hrms

From: Nancy Jo Bateman [mailto:ndbeef@btinet.net]
Sent: Tuesday, February 09, 2010 10:59 AM
To: Sterioti Hammeren, Laurie
Subject: RE: A public hearing has been scheduled to address proposed changes to the N.D. Admin. Code of HRMS . . .

Just curious. I was looking through the attachment with the changes and am wondering if you could explain to us what "genetics" means where it was added on page 10.

Nancy Jo Bateman
North Dakota Beef Commission
4023 State Street
Bismarck, ND 58503
701-328-5120 or 1-877-321-BEEF

**Written Comments from the Department of Mineral Resources
by Director Lynn D. Helms**

**On the
Notice of Intent to Adopt and Amend Administrative Rules
Relating to human resource issues in State Government
Human Resource Management System
Chapter 4-07-02**

**Fort Totten Room, State Capitol
Bismarck, ND
March 25, 2010**

Chapter 4-07-02-21 Performance bonus

The Department of Mineral Resources supports the addition of this subsection granting the opportunity to allow performance bonuses above the 25% limitation in NDCC subsection 54-06-30(4). We feel that it is important that all employees have an opportunity to be rewarded for exceptional performance and the three special circumstances stated in the proposed rule will offer that opportunity.

Chapter 4-07-20.1-02(5) Appeals of Employer Actions

The Department of Mineral Resources questions the addition of “applicant” to paragraph 5 of this subsection. How does this relate to timely assistance under the Employee Assistance Program for persons who are not employees of the State?

Chapter 4-07-20.2 Appeals of Discrimination or Reprisal

In reviewing Article 4-07 regarding the Organization of Human Resource Management Services, the Department of Mineral Resources notes that “applicants, probationary employees, regular employees, employees, and non-classified service” have been added or modified throughout the various chapters.

When the Department of Mineral Resources references HRMS rules for “applicants”, we are directed to follow Federal Recruitment and Selection Employment Laws as well as State Laws affecting selection of applicants and the ND Human Rights Act NDCC 14-02.4-03 as it relates to Employer’s discriminatory hiring practices.

When referencing HRMS rules for “probationary employees, regular employees, classified service, and non-classified service, we must pore through numerous different sections (Public Employees Relations Act NDCC 34-11.1, NDAC 4-07) to identify what rule or regulation applies to the respective employee type. The rule changes as proposed insert these terms in a variety of ways into a number of various sections which exacerbates an already confusing set of procedures regarding specific employee rights as they relate to employment law. This confusion is likely to result in proper procedures not being followed, unnecessary hearings, and increased risk of litigation.

The Department of Mineral Resources (DMR) proposes that HRMS provide documentation clarifying the appeal rights available to each employee status.

Chapter 4-07-36-02 Payment of training and tuition

The Department of Mineral Resources supports the addition of this section dealing with the prorated repayment of tuition by employees who leave agency employment within two years of receiving free tuition payments.

Sterioti Hammeren, Laurie

From: Sterioti Hammeren, Laurie
Sent: Thursday, March 25, 2010 5:51 PM
To: Hvinden, Dave C.
Cc: Helms, Lynn D.; Fine, Karlene K.
Subject: RE: 2010 HRMS new rules comments final.doc

Thank you. Karlene gave me the corrected copy. I appreciate your cooperation and suggested changes.

Laurie Sterioti Hammeren, SPHR, Director
ND Human Resource Management Services
600 East Boulevard Avenue, Dept. 113
Bismarck, ND 58505-0120
Tele: (701) 328-4735
Fax: (701) 328-1475
Web: www.nd.gov/hrms

From: Hvinden, Dave C.
Sent: Thursday, March 25, 2010 4:46 PM
To: Sterioti Hammeren, Laurie
Cc: Helms, Lynn D.; Fine, Karlene K.
Subject: 2010 HRMS new rules comments final.doc

Laurie,
Please accept the revised comments above to replace previously delivered comments. Thanks

Dave

OMB Grievances		
Who may grieve discrimination	Who may grieve reprisal	Who may grieve employer actions
<ul style="list-style-type: none"> • Applicants • Probationary Employees • Regular Employees • Non-classified Employees (including temps) 	<ul style="list-style-type: none"> • Applicants • Probationary Employees • Regular Employees • Non-classified Employees (including temps) 	<ul style="list-style-type: none"> • Applicants • Probationary Employees • Regular Employees • Non-classified Employees (including temps)

HRMS Appeals		
Who may grieve discrimination	Who may grieve reprisal	Who may grieve employer actions
<ul style="list-style-type: none"> • Applicants for classified jobs • Probationary Employees • Regular Employees 	<ul style="list-style-type: none"> • Applicants for classified jobs • Any employee except Higher Education and Judicial (includes temps not classified) 	<ul style="list-style-type: none"> • Only non-probationary classified employees