

CHAPTER 4-07-02

SALARY ADMINISTRATION PROCEDURES

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4-07-02-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 54-44.3, and sections 54-06-30 and 54-06-31, except:

1. "Appointing authority" has the same meaning as provided in North Dakota Century Code section 54-44.3-02.
2. "Class" or "classification" means a group of positions, regardless of location, which are enough alike in duties and responsibilities to be called by the same descriptive title, to be given the same pay range under similar conditions, and to require substantially the same qualifications.
3. "Classification plan" means the listing of all the classes that have been established, the description for those classes, and the process and procedures developed to maintain the plan.
4. "Equity increase" means a salary increase provided to a classified employee to mitigate either a serious internal agency inequity or a documented external market condition.
5. "General salary increase" means a salary increase provided to classified employees by specific legislative appropriation.
6. "Hiring rate" means the salary level assigned to an employee upon initial employment with an agency.
7. ~~"Job evaluation committee" is the committee responsible to evaluate, maintain, and ensure the consistency of job evaluations of the North Dakota classification system. The job evaluation committee shall be made up of professional human resource staff from human resource management services and state agencies designated by the director of human resource management services.~~

7. "Pay grade" means the number assigned to a classification which corresponds with one specific range of pay rates.
8. "Performance increase" means a salary increase provided to a classified employee in recognition of documented performance which is consistently superior or which consistently exceeds documented performance standards.
9. "Probationary increase" means a salary increase provided to a classified employee upon the successful completion of their applicable probationary period.
10. "Promotional increase" means a salary increase provided to a classified employee when the employee is assigned to a regular, classified position in a different class which has a higher pay grade or which reflects a substantially higher level of responsibility than the employee's previous position, ~~and the assignment is not a result of a reclassification of the employee's position.~~
11. "Reclassification adjustment" means a salary adjustment change applied to a classified employee to ensure salary alignment when the employee's position is reallocated to a different classification that has a different pay grade.
12. "Responsibility level or workload increase" means a salary increase provided to a classified employee when either of the following conditions are met:
 - a. The level of duties and responsibilities assigned to the employee is permanently changed, is documented, and is independent of any change in classification.
 - b. A substantial, documented, increase in workload is assigned to a position.
13. "Salary range" means the range of pay rates, from minimum to maximum that are assigned to a pay grade, ~~and which are often divided into quartiles for reference.~~
14. "Temporary increase" means a salary increase provided to a classified employee when the employee is assigned temporarily to perform a higher level of responsibilities or increased workload on an acting or interim basis.
15. "Targeted market equity increase" means a salary increase to be granted only when the legislature has defined and approved implementation of an equity program to address talent attraction, retention challenges or strategic market alignment.

History: Effective March 1, 1991; amended effective July 1, 2004; July 1, 2014; July 1, 2022; 1, 2026.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

4-07-02-02. Scope of chapter.

This chapter applies to all state agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by human resource management services, except those agencies headed by an elected official, and except those institutions in the university system. Elected officials and institutions in the university system may, at their option, agree to the application of chapter 4-07-02 to their specific agency. Sections 4-07-02-05, 4-07-02-06, 4-07-02-12, and 4-07-02-17 apply to local government agencies that employ individuals in positions classified by human resource management services.

History: Effective March 1, 1991; amended effective November 1, 1996; July 1, 2004.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

4-07-02-03. Purpose of chapter.

The purpose of this chapter is to ensure that the salaries of classified employees are paid in a manner consistent with the state's classification plan, its compensation plan, and its salary administration policy.

History: Effective March 1, 1991.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7)

4-07-02-04. Relationship to available funds.

All salary actions under this chapter are subject to the availability of appropriated funds. No person may take a salary action under this chapter if it were to cause an agency to exceed its budget authorization.

History: Effective March 1, 1991.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7), 54-44.3-12.1, 54-44.3-15

4-07-02-05. Salaries must be within the assigned salary range.

Human resource management services shall assign a pay grade and a salary range to each approved class in the classification plan. Unless otherwise provided by human resource management services, the salary level of a classified employee must be within the assigned salary range.

History: Effective March 1, 1991; amended effective July 1, 2004.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1), 54-44.3-12(7), 54-44.3-15

4-07-02-06. Exceptions.

Exceptions to the requirements of chapter 4-07-02 normally require prior written approval from the director of human resource management services. In emergency situations exceptions may be provided verbally. Appointing authorities shall describe their justification for the exception and the impact that denying the exception would have on the agency or the state. Written documentation in justification of the exception must be provided by the appointing authority at the earliest practical time following a verbal approval.

History: Effective March 1, 1991; amended effective July 1, 2004.

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

Law Implemented: NDCC 54-44.3-12(1), 54-44.3-12(7)

4-07-02-07. General salary increase.

A general salary increase must be provided in accordance with any specific guidelines or requirements as appropriated by the legislative assembly.

History: Effective March 1, 1991.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-08. Hiring rate.

When establishing an entry salary, an appointing authority should consider the employee's job-related qualifications, the agency's ability to recruit qualified employees, the overall relationship of state employees' salaries to market salaries, and internal equity with existing employees' salaries. In determining a starting salary for an applicant who is a current employee of another state agency, an appointing authority also should consider equity between the state agencies.

History: Effective March 1, 1991; amended effective July 1, 2004; April 1, 2020.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-09. Documents needed for hiring rate above the first quartile.

Repealed effective July 1, 2004.

4-07-02-10. Probationary increase.

An appointing authority may grant an increase of up to five percent upon an employee's successful completion of a probationary period. The size of the increase may vary depending on factors that include performance, internal equity, and budget appropriations.

History: Effective March 1, 1991; amended effective July 1, 2004.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-11. Responsibility level or workload increase.

An appointing authority may grant a responsibility level or workload salary increase if all of the following requirements are met:

1. The increase does not exceed twenty percent per biennium for an employee.
2. Consideration is given to the effect granting the increase would have on internal equity.
3. The change in workload or responsibility is documented and on file within the agency.

History: Effective March 1, 1991; amended effective July 1, 2004.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-12. Reclassification adjustment.

An appointing authority may make an adjustment to a salary as a result of a reclassification according to the following:

1. If the pay grade is higher following a reclassification action, then an increase up to five percent above the minimum of the new salary range may be provided. The salary must be at least equivalent to the minimum of the new salary range.
2. If the pay grade is lower following a reclassification action, then either of the following apply:
 - a. The employee's salary may remain the same if it is within the lower salary range.
 - b. The employee's salary may be reduced to within the lower range to equitably relate to the salaries of other employees in the same or related classes.
3. If the employee's salary is above the maximum of the salary range for the new job grade, then either of the following apply:
 - a. The salary of the employee may remain above the new maximum when the reclassification is a result of a program change, a reorganization, or is a result of a management need not associated with the employee's performance. The salary may remain above the maximum as long as the employee remains in the classification. No further increases in salary may be granted the employee as long as the salary remains above the maximum, except those legislatively authorized.
 - b. The salary must be reduced at least to the maximum of the new range if the lower classification results from the removal of duties and responsibilities from the employee as a result of substandard performance or for disciplinary reasons.

4. If the pay grade is not changed, no salary adjustment shall be made.

History: Effective March 1, 1991; amended effective July 1, 2004.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-07, 54-44.3-12(7)

4-07-02-13. Promotional increase.

An appointing authority may grant a salary increase when an employee is promoted, if all of the following requirements are met:

1. The employee must be paid at least the minimum of the new salary range.
2. Consideration must be given to the internal salary relationships that would exist in the agency if the increase were to be given.
3. The magnitude of the change in jobs is considered.

History: Effective March 1, 1991.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-14. Performance increase.

An appointing authority may grant an increase for performance if all of the following requirements are met:

1. A proper performance appraisal process is used by the agency pursuant to chapter 4-07-10.
2. The increase does not exceed five percent in any twelve-month period for an employee.
3. Consideration is given to internal salary equity of other agency employees.

History: Effective March 1, 1991; amended effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-15. Equity increase.

1. An appointing authority may grant an equity increase if all of the following requirements are met:
 - a. The increase does not exceed twenty percent per biennium for an employee.
 - b. At the time the increase is granted, documentation must be submitted to human resource management services that includes all of the following:
 - (1) A definition of the inequity.
 - (2) An explanation of what created the inequity.
 - (3) A statement that an additional inequity will not result.
 - (4) The relevant available market data in cases of external equity.
 - c. The agency must consider the overall relationship of state employees' salaries to market salaries and avoid creating internal inequities.
2. Targeted market equity increases are distinct from other equity increases in that they are only authorized when the legislature has defined and approved the implementation of an equity program to proactively address talent attraction, retention challenges or strategic market alignment for one or more categories of state employees. Specific guidelines for administering

any targeted market equity increase program will be determined by human resources management services.

History: Effective March 1, 1991; amended effective July 1, 2004; 1, 2026.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-16. Temporary increase.

An appointing authority may grant a temporary increase if all of the following requirements are met:

1. An increase may not be given for a temporary situation of less than thirty days.
2. An employee may not continue to receive a temporary increase for more than thirty days after the special circumstances ceased to exist.
3. Consideration is given to the magnitude of the change in responsibility level.

History: Effective March 1, 1991.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-17. Adjustment following assignment to a lower pay grade.

When an employee is assigned to a position at a lower pay grade, and the employee's salary is above the maximum of the new grade, then either of the following may result:

1. The salary may remain above the new maximum when the assignment results from a program change, reorganization, or other management need not associated with the employee's performance. No further increases may be granted as long as the salary remains above the maximum.
2. The salary may be reduced to at least the maximum of the new range if the assignment resulted from substandard performance or other disciplinary reasons.

History: Effective March 1, 1991.

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

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(7)

4-07-02-18. Bonuses.

A recruitment, retention, or performance bonus may be provided according to North Dakota Century Code chapters-sections 54-06-30 and 54-06-31.

History: Effective July 1, 2004; amended effective 1, 2026.

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

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-19. Recruitment bonus.

A recruitment bonus may be provided by an agency if the employee receiving the bonus was not employed by a state agency immediately preceding employment with the hiring agency, except when a recruitment bonus is provided to an employee for a referral program outlined in the agency's recruitment policy. If application of this rule would result in significant impact on the agency or negative fiscal consequences to the state, an exception may be sought under section 4-07-02-06.

History: Effective July 1, 2004.

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

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-20. Retention bonus.

A retention bonus may be given as an incentive to retain an employee in state government unless the employee is leaving to work for another state agency. If application of this rule would result in significant impact on the agency or negative fiscal consequences to the state, an exception may be sought under section 4-07-02-06.

History: Effective July 1, 2004.

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

Law Implemented: NDCC 54-06-31, 54-44.3-12(1)

4-07-02-21. Performance bonus.

Repealed effective April 1, 2020.

CHAPTER 4-07-05 **RECRUITMENT AND SELECTION**

Section

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4-07-05-01. 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 September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

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

4-07-05-01.1. Definitions.

The terms used throughout this chapter have the same meaning as those in North Dakota Century Code chapter 54-44.3, except:

1. "Closing date" means a date by which applications must be received as specified.
2. "External recruiting" means that applications for filling a vacant position under an appointing authority shall be accepted from current employees of the appointing authority and persons not employed by the appointing authority.
3. "Internal recruiting" means that applications for filling a vacant position under an appointing authority shall only be accepted from current employees of the appointing authority and employees eligible for reinstatement by the appointing authority.
4. "Promotion" means a personnel action that results in the advancement of an employee to a position in a different class that has a higher pay grade than the employee's previous position or which reflects a substantially higher level of responsibility.
5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the personnel action occurs.
6. "Reinstatement" means a personnel action that involves the reemployment of a previous employee of the appointing authority, who resigned or was separated while in good standing in a classified position.

7. "Transfer" means a personnel action that results in the reassignment of an employee from one position to a different position that has the same pay grade as the employee's previous position and that does not result in a break in service.
8. "Vacancy announcement" means an announcement that a particular position is vacant and that the appointing authority intends to recruit to fill it.

History: Effective July 1, 1995; amended effective November 1, 1996; July 1, 2004; April 1, 2020; July 1, 2022; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-05-02. Promotion.

An appointing authority may promote a regular or probationary employee to fill a vacant classified position in accordance with section 4-07-05-05.1.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

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

4-07-05-02.1. Reinstatement.

An appointing authority may reinstate a former employee who was hired through a competitive process and who has successfully completed a required probationary period to fill a vacant position. The reinstatement must be effective within three years from the date of the employee's separation.

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)

4-07-05-02.2. Transfer.

An appointing authority may transfer a regular or probationary employee from one classified position to another classified position in accordance with section 4-07-05-05.1.

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)

4-07-05-03. Minimum qualifications.

Except as provided in section 4-07-05-06, an appointing authority may employ, promote, reinstate, or transfer a person into or to a position in the classified service provided that person possesses qualifications that at least meet the minimum qualifications for that class as stated in the class descriptions and successfully completes any examination requirement specified by the appointing authority.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

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

4-07-05-04. Notifying human resource management services.

An appointing authority shall notify human resource management services of each vacant classified, nontemporary position that the appointing authority intends to fill through external recruitment. The notification must be submitted prior to beginning the recruiting effort in the form of a

completed vacancy announcement transmitted electronically in the state-wide approved applicant tracking system. The appointing authority also must list vacancies for external recruitment with job service North Dakota.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2022; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-05-05. External recruiting.

When an appointing authority proceeds to fill a vacant classified, nontemporary position through external recruiting, the appointing authority shall ensure that the public has the opportunity to know of and apply for the position. Additionally, the appointing authority shall select the applicant for appointment on the basis of the applicant's job-related qualifications for the position.

History: Effective September 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 54-44.3-12

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

4-07-05-05.1. Internal recruiting.

When an appointing authority proceeds to fill a vacant classified, nontemporary position by recruiting within its agency, the appointing authority shall ensure that all employees occupying classified positions of the appointing authority or within the specified work units have the opportunity to know of and apply for the position. An appointing authority may specify a work unit or work units within the agency from which applicants may be considered. However, there is no requirement for a vacancy announcement when the transfer of an employee to a vacant position is necessary to provide a reasonable accommodation for an employee under the Americans with Disabilities Act, or to avoid a reduction-in-force during a reorganization.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

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

4-07-05-05.2. Temporary employees and interns.

An appointing authority may consider a current temporary employee or individual who has completed an approved internship with the agency as an internal applicant provided the applicant meets the following requirements:

- ~~1. A temporary employee must have been was~~ selected on an open and competitive basis at the time of employment to the current temporary or approved intern position with the agency.
- ~~2. An intern must have completed a documented internship with the agency within a two-year period immediately prior to the employment date.~~

History: Effective November 1, 1996; amended effective July 1, 2004; 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-05-06. Alternative classification.

When no fully qualified candidates are available after an internal or external recruiting effort, an appointing authority may apply an alternative classification when filling a position if each of the following requirements are met:

1. The hiring authority shall include clear language in the position announcement that an alternative classification may be considered and explaining what circumstances will justify an alternative classification.
2. The alternative classification must be one for which human resource management services either has granted specific prior approval for use in the position announcement or has provided delegated authority for position classification assignments to the agency as pursuant to section 4-07-03-06.1.
3. The applicant selected possesses the appropriate license or meets other applicable statutory requirements.

History: Effective July 1, 1995; amended effective November 1, 1996; July 1, 2004; April 1, 2020.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-05-07. Veterans' preference.

Veterans' preference must be applied in the external recruitment and selection of employees in accordance with North Dakota Century Code chapter 37-19.1.

History: Effective November 1, 1996; amended January 1, 2012; 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 37-19.1-02, 54-44.3-23

4-07-05-08. Vacancy announcement contents.

Each vacancy announcement must include the following information:

1. Class or working title, full-time or part-time status, regular or temporary status.
- ~~2. Position number for internal use only.~~
2. Salary or projected hiring range.
3. Closing date.
4. Duty location of position (city) ~~and optional statement on the~~ or feasibility of remote work.
5. Procedures for applying.
6. Summary of work.
7. Minimum and optional preferred qualifications ~~and special requirements~~.
- ~~8. Whether recruitment is internal or external.~~
8. EEO and Accessibility Statements.
9. Background check or pre-employment requirements.
10. If a position is exempt from veterans' preference, the advertisement must state that veterans' preference does not apply to the position being advertised.

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; July 1, 2008; January 1, 2012; April 1, 2020; July 1, 2022; 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 37-19.1-02(4), 54-44.3-12

4-07-05-09. Vacancy announcement requirements.

1. A vacancy announcement may not contain minimum qualifications that are less than the established minimum qualifications on the class description, but it may contain more specific requirements.
2. When advertising for required education on a vacancy announcement, an appointing authority may:
 - a. Narrow the range of appropriate degrees.
 - b. Specify the additional training or experience needed for working in an upper level of a class series.
3. An appointing authority shall define the type and length of experience that substitutes for a college degree, if a substitution statement is used in the minimum qualifications of the class description.
4. An appointing authority wishing to consider applicants for an alternative classification in the initial vacancy announcement shall indicate such and state the required minimum qualifications for the alternative classification.

History: Effective November 1, 1996; amended effective July 1, 2004; April 1, 2020.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

CHAPTER 4-07-12
ANNUAL AND NEW HIRE LEAVE

Section

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4-07-12-01. Scope of chapter.

This chapter applies to all state and local government agencies, departments, institutions, and boards and commissions, except where indicated, that employ individuals in positions classified by human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-12-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06 and 54-44.3 and section 54-52-01, except:

1. "Annual leave" means an approved absence from work with pay allowed under an authorized accrual schedule.
2. "Regular employee" means a person who has completed the probationary period and who is in a position classified by human resource management services.
3. "New hire leave" means a separate leave balance to use for an approved absence from work with pay within the first year of employment.
4. "Reinstatement" means a personnel action that involves the reemployment of a previous employee in a classified position as defined by chapter 4-07-05.
5. "Interagency transfer" means a personnel action that results in the reassignment of an employee from one position to a different position in another state agency and that does not result in a break in service.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-12-03. Annual leave accrual.

Employees eligible for annual leave begin to accrue leave from the date of hire.

History: Effective September 1, 1992; amended effective November 1, 1996; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-12-04. Annual leave accrual schedule.

1. State agencies are advised that the following annual leave accrual schedule is required, except as referenced in subsection 2 herein, 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

2. Effective after April 30, 2026, a state agency may grant, at hire, annual leave within the parameters of eight to sixteen hours per month, which may exceed the amount based on tenure of employment, if all the following requirements are met:

- a. The position being hired for was previously identified as a hard-to-fill occupation pursuant to the requirements set forth in North Dakota Century Code section 54-06-31.
- b. Prior to granting an enhanced annual leave accrual schedule, the state agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving enhanced annual leave accrual. The written policy must address the specific positions that qualify for enhanced annual leave accrual and why the positions have been identified as hard-to-fill.
- c. The state agency has filed the written policy with human resource management services.

~~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; July 1, 2008; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-12-05. Accrual for ~~employment for a fraction of a month~~.

An employee accrues annual leave for being employed for a fraction of a month. The number of annual leave hours earned by an employee for employment for a fraction of a month must be in proportion to the total number of straight time hours the employee actually worked compared to ~~the total number of normal~~ working hours in the month.

History: Effective September 1, 1992; amended effective 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-12-06. Annual leave taken in fifteen-minute increments.

Repealed effective January 1, 1993.

4-07-12-07. Approval required.

Generally, a request to use annual leave must be approved before the employee is authorized to take the leave. A leave request may be denied if the employee's absence would unduly disrupt the operations or services of the agency.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

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

4-07-12-08. Annual leave limit.

No more than two hundred forty hours of accrued annual leave may be carried forward beyond April thirtieth of each year. If a political subdivision that employs individuals in positions classified by human resource management services uses a cutoff date other than April thirtieth, then the political subdivision may continue to do so as long as the same cutoff date is used for all of the agency's employees who occupy positions that are classified by human resource management services, and the two-hundred-forty-hour limit is observed.

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)

4-07-12-09. Change of cutoff date.

Repealed effective July 1, 2004.

4-07-12-10. Pay during employment.

An employee may not be paid for unused annual leave while the employee remains in the service of the agency, except for the following reasons:

1. The employee takes a long-term leave of absence;
2. The employee goes on educational leave;
3. The employee moves to temporary employment; or
4. Human resource management services approves a written request from an agency for an exception to this section for a business-related reason.

When an employee is transferring from one agency to another, the employee must be paid for the difference in hours between what the employee has accumulated and the number of hours the gaining agency will accept. When an employee is leaving the service of the agency, the employee must be paid for all accrued hours of annual leave.

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

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

4-07-12-11. Credit for temporary service.

A temporary employee who becomes regular must be given credit for the employee's length of service as a temporary employee for the purpose of determining the annual leave accrual rate provided there was no break in service beyond one year. An agency may not grant annual leave hours to a temporary employee.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

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

4-07-12-12. Annual leave and reemployment.

An employee who leaves ~~the employee's~~ employment and who is rehired within 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.

History: Effective September 1, 1992; amended effective July 1, 2008; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-12-13. Assumption of accrued annual leave or an enhanced annual leave accrual.

A state agency appointing authority employing an individual from another state agency shall accept all or only a part of the employee's accrued annual leave hours the employee requests to transfer. If the individual granted an interagency transfer from another state agency was previously granted an enhanced annual leave accrual rate, the hiring agency may continue that enhanced rate only if the individual is hired into a designated hard-to-fill position, as defined in section 4-07-12-04. If the individual is not hired into a designated hard-to-fill position, the individual's annual leave accrual rate shall revert to the standard rate based on total years of qualifying service, as defined in section 4-07-12-04. State agencies covered by the North Dakota merit system shall accept all or a part of accrued annual leave hours that a human service zone the employee requests to transfer, if the employee occupies of a human service zone employee in a position classified by human resource management services.

A human service zone board may shall accept all or a part of accrued annual leave hours an employee requests to transfer from another human service zone 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; July 1, 2008; October 1, 2023; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-12-14. New hire leave.

1. New hire leave is applicable to state agencies only.
2. A state agency that employs an employee eligible for new hire leave shall, upon hire, grant the individual forty hours of new hire leave. Employees that start employment with a state agency after April 30, 2026, are eligible for new hire leave.
3. Employees who were previously employed with a state agency and are eligible for reinstatement or who are granted an interagency transfer are not eligible for new hire leave.
4. New hire leave must be used within the first year of employment.
5. Any new hire leave remaining after completion of the first year of employment is eliminated.
6. New hire leave is not earned paid time off and is not paid out upon separation of employment.
7. New hire leave is not accrued leave.

History: Effective 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14

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 Employment
4-07-13-11	Sick Leave and Reemployment
4-07-13-12	Assumption of Accrued Sick Leave

4-07-13-01. 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 September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

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

4-07-13-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06, 54-44.3, and 54-52.4, except:

1. "Eligible family member" means the employee's spouse, parent (natural, adoptive, foster, and stepparent), child (natural, adoptive, foster, and stepchild), or any other family member who is financially or legally dependent upon the employee or who resides with the employee for the purpose of the employee providing care to the family member.
2. "Sick leave" means an approved absence from work, with pay, for use in accordance with section 4-07-13-07.

History: Effective September 1, 1992; amended effective November 1, 1996.

General Authority: NDCC 54-44.3-12

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

4-07-13-03. Sick leave accrual.

Employees eligible for sick leave begin to accrue leave from the date of hire.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-13-04. Sick leave accrual rate.

State agencies are advised that ~~the following sick leave an~~ accrual schedule ~~providing eight hours of sick leave per month~~ is required for use by each state agency subject to this chapter.

Years of Service	Hours Earned Per Month
Zero to all	Eight

~~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; July 1, 2008; 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-13-05. Accrual for fractional months.

An employee accrues sick leave for employment for a fraction of a month. The number of sick leave hours earned by an employee for employment for a fraction of a month must be in proportion to the total number of straight time hours the employee actually worked compared to the total number of working hours in a month.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

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

4-07-13-06. No limit on sick leave carryover.

An employee may not be limited in the number of unused earned sick leave hours that may be carried over from one calendar year to another.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

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

4-07-13-07. Uses of sick leave.

Sick leave may be used by an employee when:

1. The employee is ill or injured and is unable to work.
2. The employee has an appointment for the diagnosis or treatment of a medically related condition.
3. The employee wishes to attend to the needs of the employee's eligible family members who are ill or to assist them in obtaining other services related to their health or well-being.
 - a. Sick leave used for these purposes may not exceed eighty hours per calendar year.
 - b. The employee may, per calendar year, take up to an additional four hundred eighty hours of the employee's accrued sick leave to care for the employee's child, spouse, or parent with a serious health condition. The employer may require the employee to provide written verification of the serious health condition by a health care provider.
4. During the first six months following the birth or placement of a child, an employee may use up to two hundred forty hours six weeks of the employee's accrued sick leave for the employee's newborn child or to care for a child placed with the employee for adoption or placed with the employee as a precondition to adoption. This does not prevent an employee from using sick leave for the employee's illness, medical needs, or health needs following the birth of a child or from using leave under North Dakota Century Code section 54-52.4-03.

5. The employee is seeking services or assisting the employee's spouse, parent, child, or sibling in obtaining services, relating to domestic violence, a sex offense, stalking, or terrorizing. At the discretion of the employee's supervisor, the sick leave hours used for this purpose may be limited to forty hours per calendar year.
6. The employee requests leave to bereave the death of a child. Sick leave for this purpose is limited to one hundred sixty hours and must be taken within six months following the death of the child.
7. It is appropriate as a participant in and per the recommendations from an employee assistance program.

History: Effective September 1, 1992; amended effective January 1, 2012; January 1, 2017; April 1, 2020; 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12(1), 54-52.4-02, 54-52.4-03

4-07-13-08. Sick leave taken in increments.

Repealed effective January 1, 1993.

4-07-13-09. Sick leave and pregnancy.

Repealed effective November 1, 1996.

4-07-13-10. Temporary employment.

A temporary employee may not be credited with any accrued sick leave hours.

History: Effective September 1, 1992; amended effective July 1, 2008.

General Authority: NDCC 54-44.3-12

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

4-07-13-11. Sick leave and reemployment.

An employee who leaves his or her employment and who is rehired within one year must be credited with the amount of sick leave hours the employee had accumulated at the time of departure, less any amount for which the employee had subsequently been paid. An employee affected by a reduction in force and rehired within two years must be credited with the amount of sick leave hours the employee had accumulated at the time of departure, less any amount for which the employee had subsequently been paid.

History: Effective September 1, 1992; amended effective 1, 2026.

General Authority: NDCC 54-44.3-12

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

4-07-13-12. Assumption of accrued sick leave.

A state agency appointing authority employing an individual from another state agency shall accept all of the employee's accrued sick leave hours. State agencies covered by the North Dakota merit system shall accept all accrued sick leave hours of a human service zone county social service employee in a position classified by human resource management services.

A human service zone county social service board may shall accept all of accrued sick leave hours an employee requests to transfer from another human service zone 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; July 1, 2008; 1, 2026.

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-18 SERVICE AWARD PROGRAMS

Section	
4-07-18-01	Scope of Chapter
4-07-18-02	Requirement for Service Award Program
4-07-18-03	Retroactivity
4-07-18-04	Length of Service Required to Receive Award
4-07-18-05	Service Award Types
4-07-18-06	Retirement Awards
4-07-18-07	Cash

4-07-18-01. Scope of chapter.

This chapter applies to all state agencies, departments, institutions, and boards and commissions that employ individuals in positions classified by human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

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

4-07-18-02. Requirement for service award program.

Each agency, department, institution, board and commission shall recognize certain service anniversaries of classified employees by implementing and administering a service award program. Service awards may be postponed or withheld if there are documented problems with an employee's performance.

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)

4-07-18-03. Retroactivity.

The required service award program may not be retroactive. However, all times worked in the employment of the state prior to January 1, 1986, must be counted toward any future service award.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

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

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; July 1, 2008.

General Authority: NDCC 54-44.3-12

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

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.
2. Following the completion of five years; certificate or plaque, and a gift not to exceed a value of fifty dollars.
3. Following the completion of ten years; certificate or plaque, and a gift not to exceed a value of one hundred dollars.
4. Following the completion of fifteen years; certificate or plaque, and a gift not to exceed a value of one hundred fifty dollars.
5. Following the completion of twenty years; certificate or plaque, and a gift not to exceed a value of two hundred dollars.
6. Following the completion of twenty-five years; certificate or plaque, and a gift not to exceed a value of two hundred fifty dollars.
7. Following the completion of thirty years; certificate or plaque, and a gift not to exceed a value of three hundred dollars.
8. Following the completion of thirty-five years; certificate or plaque, and a gift not to exceed a value of three hundred fifty dollars.
9. Following the completion of forty years; certificate or plaque, and a gift not to exceed a value of four hundred dollars.
10. Following the completion of forty-five years; certificate or plaque, and a gift not to exceed a value of four hundred fifty dollars.
11. 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; July 1, 2008.

General Authority: NDCC 54-44.3-12

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

4-07-18-06. Retirement awards.

A retirement award shall be provided to an employee who has a minimum of fifteen years of state service, and who has not been previously recognized for a retirement by the state, as follows:

1. A retirement certificate signed by the governor and/or a plaque.
2. A gift with a value not to exceed two hundred dollars.

A farewell party may be provided upon agreement of the employee and the agency. Retirement awards may be withheld if there are documented problems with an employee's performance.

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)

4-07-18-07. Cash Payment type.

An agency may not provide physical cash as a form of payment. Payment to an employee as part of a service or retirement award program must be issued through one of the following approved methods: payroll adjustment, gift certificate, general-use prepaid gift card, or another Office of Management and Budget approved cash-equivalent payment method. An agency may, however, provide a gift certificate.

History: Effective September 1, 1992; amended effective July 1, 2004; [1.2026](#).

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC [54-06-32](#), 54-44.3-12(1)

CHAPTER 4-07-14

FUNERAL LEAVE AND HONOR GUARD LEAVE

Section

4-07-14-01	Scope of Chapter
4-07-14-02	Definitions
4-07-14-03	Granting Funeral or Honor Guard Leave
4-07-14-04	Not Considered Sick Leave or Annual Leave

4-07-14-01. 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 September 1, 1992; amended effective November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

4-07-14-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3 and section 54-06-36, except:

1. "Family" means ~~an husband, wife, son, daughter, father, mother, stepparents, brother, sister, brother in law, sister in law, grandparents, grandchildren, stepchildren, foster parents, foster children, daughter in law, and son in law. employee's spouse; natural, adoptive, or foster parent, parent-in-law, and stepparent; natural, adoptive, foster, and step child; spouse of child; natural, adoptive, foster, in-law, and step sibling; natural, adoptive, foster, and step grandparent; and natural, adoptive, foster, and step grandchild.~~
2. "Funeral leave" means an approved absence from work, with pay, of up to twenty-four working hours, provided to an employee to attend or make arrangements for a funeral, memorial, burial service, including travel to and from the funeral or other service, or to address financial or legal matters that arise as a result of a death in the employee's family, ~~or in the family of an employee's spouse.~~
3. "Honor guard" means an individual with an essential ceremonial role in the funeral service of a veteran.
4. "Honor guard leave" means the approved absence from work, with pay, for up to twenty-four working hours per calendar year for an employee to participate in an honor guard for a funeral service of a veteran.
5. "Individual with an essential ceremonial role" performing as part of the official funeral service of a veteran is a member of the flagbearers, a member of the flag-folding team, a member of the firing party, the bugler, or the honor guard captain.

History: Effective September 1, 1992; amended effective January 1, 2012; 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

4-07-14-03. Granting funeral or honor guard leave.

An appointing authority may grant a request for funeral or honor guard leave even if the absence of the employee might interfere with the normal operations of the agency.

History: Effective September 1, 1992; amended effective January 1, 2012.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

An agency may not consider funeral or honor guard leave as sick leave or annual leave.

History: Effective September 1, 1992; amended effective January 1, 2012.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-36, 54-44.3-12(1)

CHAPTER 4-07-20.1

APPEALS OF EMPLOYER ACTIONS

Section	
4-07-20.1-01	Scope of Chapter
4-07-20.1-02	Definitions
4-07-20.1-03	A Regular Employee May File a Grievance Regarding an Employer Action
4-07-20.1-04	Commencement of Agency Grievance Procedure - Time Limitations
4-07-20.1-05	Waiver of Agency Grievance Procedure
4-07-20.1-06	A Regular Employee May Appeal to Human Resource Management Services
4-07-20.1-07	Limitations for Reduction-in-Force Appeal
4-07-20.1-08	Procedure for Appeals of Employer Actions to Human Resource Management Services

4-07-20.1-01. Scope of chapter.

This chapter applies to regular employees.

History: Effective November 1, 1996.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Date of service" means the date the notice was mailed or transmitted by electronic means.
2. "Employer action" means an action taken by an appointing authority that affects a regular employee through a demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal.
3. "Forced relocation" means the involuntary transfer or reassignment of a regular employee from one work location in the state to another work location in the state that requires the employee to move to a different place of residence. Telecommuting and other alternative work location agreements are not considered forced relocations.
4. "Reduction-in-force" means the loss of employment by a regular employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization.
5. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the employer action occurred.
6. "Reprisal" means an unfavorable employment-related action taken against an applicant or employee by an appointing authority for:
 - a. in good faith filing a complaint, testifying, assisting, appealing, or participating in an investigation, proceeding, hearing, or litigation;
 - b. opposing any unlawful discriminatory practice; or
 - c. appealing to human resource management services or the state personnel board; for exercising the employee's rights under the Public Employees Relations Act of 1985, North Dakota Century Code chapter 34-11.1 or North Dakota Century Code section 34-01-20; for testifying before a legislative committee; or for employees who request timely assistance under the employee assistance program.

7. "Waiver" means a written agreement between a regular employee and the appointing authority not to proceed with the agency grievance procedure and to permit an appeal to be made directly to human resource management services.
8. "Working days" means Monday through Friday exclusive of holidays.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010; January 1, 2024; January 1, 2026.

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

Law Implemented: NDCC 34-11.1-04(5), 54-44.3-12.2

4-07-20.1-03. A regular employee may file a grievance regarding an employer action.

A regular employee may, in accordance with the respective agency's grievance procedure, file a grievance regarding demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal. A grievance must be processed through the agency grievance procedure prior to submitting an appeal to human resource management services, unless a waiver is agreed upon as provided for in section 4-07-20.1-05.

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

4-07-20.1-04. Commencement of agency grievance procedure - Time limitations.

The employee shall begin the agency grievance procedure within fifteen working days from the date of notice of the employer action, except in the case of reprisal. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery. The employee grieving reprisal action shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to human resource management services. The agency appointing authority or designee, for good cause shown, may waive the time limitations for filing a grievance. Good cause means those circumstances that reasonably and without any fault on the part of the grievant prevented the filing of a grievance in a timely fashion. In no event may a grievance be deemed timely after sixty days have elapsed from the date of the employer action.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

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; July 1, 2008.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.1-06. A regular employee may appeal to human resource management services.

A regular employee may appeal an employer action to human resource management services if:

1. The employee has processed a grievance through the agency grievance procedure and is dissatisfied with the result;
2. The employee and the appointing authority have agreed to a waiver of the agency grievance procedure; or
3. The agency has not established a grievance procedure or has failed to respond to a grievance in a timely manner.

No other employer actions except as defined in this chapter or otherwise specifically provided by administrative rule are appealable 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

4-07-20.1-07. Limitations for reduction-in-force appeal.

A regular employee may appeal a reduction-in-force only on the basis that the agency did not utilize a uniform comparative analysis as required by section 4-07-11-03 or that the reduction-in-force was conducted in a discriminatory manner that would violate the state's policy against discrimination as stated in North Dakota Century Code section 14-02.4-01. A former regular employee who was reduced in force may appeal a denial of reemployment only on the basis that the agency did not follow section 4-07-11-07 or that the denial of reemployment was conducted in a discriminatory manner that would violate the state's policy against discrimination as stated in North Dakota Century Code section 14-02.4-01. The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with the agency.

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

4-07-20.1-08. Procedure for appeals of employer actions 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 mailed or transmitted by electronic means 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 transmitted or delivered by electronic means. The agency shall prepare a certificate of service or provide reliable means, to show proof of the date transmitted or delivered by electronic means.
2. The director, human resource management services, shall within two working days submit a written request by electronic means to the director, office of administrative hearings, to conduct a hearing on behalf of the division and shall forward a copy of the appeal form to the appointing authority.
3. 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.
4. 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.

5. 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.
6. 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.
7. The administrative law judge shall notify the employee and the appointing authority of the final decision by sending each of them a copy of 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.
8. The administrative law judge shall return the completed appeal file to human resource management services by electronic means.
9. Any party to the appeal may review the recordings of the hearing by making a request to human resource management services by electronic means.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2008; July 1, 2010; January 1, 2024.

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

Law Implemented: NDCC 54-44.3-12.2

CHAPTER 4-07-20.2

APPEALS OF DISCRIMINATION OR REPRISAL

Section	
4-07-20.2-01	Scope of Chapter
4-07-20.2-01.1	Employees Not in the Classified Service May Appeal Claims of Reprisal
4-07-20.2-02	Definitions
4-07-20.2-03	Statutory Definitions
4-07-20.2-04	Applicants, Probationary Employees, or Regular Employees May Appeal Reprisal or Discrimination in Employment
4-07-20.2-04.1	Procedure for Applicant Appeals of Discrimination or Reprisal in Employment to Agency Appointing Authority
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 Appeals of Discrimination or Reprisal to Human Resource Management Services

4-07-20.2-01. Scope of chapter.

This chapter applies to applicants for positions classified by human resource management services, probationary employees or regular employees in classified positions who want to appeal reprisal or who want to appeal discrimination in employment because of race, color, religion, sex, national origin, age, genetics, the presence of any mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-01.1. Employees not in the classified service may appeal claims of reprisal.

This chapter also applies to employees not in the classified service who appeal a claim of reprisal under subsection 5 of North Dakota Century Code section 34-11.1-04.

History: Effective July 1, 2010.

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

Law Implemented: NDCC 34-11.1-04(5)

4-07-20.2-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3, except:

1. "Applicant" means a person who has applied for a position classified by human resource management services and who has complied with the application procedures required by the employing agency.
2. "Date of service" means the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery of electronic means, the date of actual delivery.
3. "Regular employee" means a person who has completed the probationary period and who is or was in a position classified by human resource management services at the time the alleged action occurred.

4. "Working days" means Monday through Friday exclusive of holidays.
5. Reprisal" means an unfavorable employment-related action taken against an applicant or employee by an appointing authority for:
 - a. in good faith filing a complaint, testifying, assisting, appealing, or participating in an investigation, proceeding, hearing, or litigation;
 - b. opposing any unlawful discriminatory practice; or
 - c. exercising the employee's rights under North Dakota Century Code chapter 34-11.1 or North Dakota Century Code section 34-01-20.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010: 1. 2026.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-03. Statutory definitions.

Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to them under North Dakota Century Code chapter 14-02.4 and subsection 5 of North Dakota Century Code section 34-11.1-04.

History: Effective November 1, 1996; amended effective July 1, 2010.

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

Law Implemented: NDCC 34-11.1-04(5), 54-44.3-12.2

4-07-20.2-04. Applicants, probationary employees, or regular employees may appeal reprisal or discrimination in employment.

Applicants for positions classified by human resource management services and probationary or regular employees in classified positions may appeal reprisal or may appeal discrimination in employment because of race, color, religion, sex, national origin, age, genetics, the presence of any mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

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

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

History: Effective July 1, 2008; amended effective July 1, 2010.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-12

4-07-20.2-05. Completion of agency grievance process prior to appeal to human resource management services.

A probationary or regular employee shall complete the agency grievance process prior to submitting an appeal to human resource management services for an appeal hearing, unless a waiver is granted as provided for in section 4-07-20.2-06. The employee shall begin the agency grievance procedure within fifteen working days from the date of the alleged discriminatory or reprisal action. Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to human resource management services. The agency appointing authority or designee, for good cause shown, may waive the time limitations for filing a grievance. Good cause means those circumstances that reasonably and without any fault on the part of the grievant prevented the filing of a grievance in a timely fashion. In no event may a grievance be deemed timely after sixty days have elapsed from the date of the employer action. If an agency does not have an established written grievance procedure, the employee shall submit the appeal to human resource management services within fifteen working days from the date of the alleged discriminatory or reprisal action.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-06. Waiver of agency grievance procedure.

A waiver of the agency grievance procedure is allowed by mutual agreement of the probationary or regular employee and appointing authority. The waiver must be signed by both parties within fifteen working days of the alleged discriminatory or reprisal action. Upon obtaining the waiver, the employee may appeal directly to human resource management services in accordance with section 4-07-20.2-07.

History: Effective November 1, 1996; amended effective July 1, 2004; July 1, 2010.

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

Law Implemented: NDCC 54-44.3-12.2

4-07-20.2-07. Procedure for appeals of discrimination or reprisal to human resource management services.

1. A probationary or regular 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 electronic means 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 the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery.
2. An applicant shall file the appeal form by delivery, mail, or transmittal by electronic means, 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 or reprisal action. The date of service of the notice shall be considered to be the date the notice was mailed or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery.

3. An employee in a nonclassified 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 electronic means 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 delivery.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. The administrative law judge shall return the completed appeal file to human resource management services.
11. 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; July 1, 2008; July 1, 2010.

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

Law Implemented: NDCC 34-11.1-04(5), 54-44.3-12.2

CHAPTER 4-07-37

SHARED LEAVE

Section

4-07-37-01	Scope of Chapter
4-07-37-02	Definitions
4-07-37-03	Administration of Statewide Leave Sharing Program
4-07-37-04	Policy on Qualifying Medical Conditions

4-07-37-01. Scope of chapter.

This chapter applies to all permanent regular and probationary state employees. Independent programs consistent with the human resource management services division program may be administered for state judiciary, legislative, and North Dakota university system employees.

History: Effective July 1, 2022.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14.7

4-07-37-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 54-06, 54-44.3, and 54-52.4, except:

1. "Eligible employee" means a permanent regular and probationary state employee. It does not include employees on temporary or other limited term appointments.
2. "Annual leave" means an approved absence from work with pay, as defined in section 4-07-12-02.
3. "Sick leave" means an approved absence from work with pay, for use in accordance with section 4-07-13-07.
4. "Eligible family member" means the employee's spouse, parent (natural, adoptive, foster, and stepparent), child (natural, adoptive, foster, and stepchild), or any other family or household member who is financially or legally dependent upon the employee or who resides with the employee for the purpose of the employee providing care to the family member.
5. ~~"Serious" or "extraordinary" means severe, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.~~

History: Effective July 1, 2022; amended effective July 1, 2024: 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14.7

4-07-37-03. Administration of statewide leave sharing program.

1. The human resource management services division of the office of management and budget shall administer a state leave sharing program for permanent regular and probationary state employees. The program provides a mechanism for eligible employees to donate accrued annual and sick leave to an eligible employee who does not have available leave who is suffering from a serious or extraordinary severe, extreme, or life-threatening illness, injury, impairment, or physical or mental condition. State employees also may donate accrued annual leave to another eligible employee who does not have available leave and who is caring for an eligible family member who is suffering from a severe, extreme, or life-threatening serious or extraordinary illness, injury, impairment, or physical or mental condition.

2. The human resource management services division shall approve or disapprove each request for donated leave after consultation with the requesting eligible employee's agency administrator. The division shall track the amount of leave taken by eligible employees under the program.
3. All forms of leave available for use by the recipient must be used before using shared leave. Donated leave must be credited to the eligible employee in increments that may not exceed one month. An eligible employee may not use more than four months donated leave in any twelve-month period, and an eligible employee may not retain leave beyond the occurrence necessitating the leave. Leave that has been donated but remains unused beyond the qualifying occurrence must be returned to the donating employee.
4. All donated leave must be given voluntarily. An eligible employee may not donate more than five percent of the eligible employee's accrued sick leave hours per month. An eligible employee's donation of annual leave may not reduce their annual leave balance to less than forty hours. ~~All leave must be donated in full-hour increments.~~
5. An eligible employee may request and use donated annual leave or sick leave for the purpose of donating an organ or bone marrow.
6. An employee who has received a documented verbal or written warning for inappropriate use of annual or sick leave will not be eligible to receive donated leave without specific approval from the director of the human resource management services division.

History: Effective July 1, 2022; amended effective 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14.7

4-07-37-04. Policy on qualifying medical conditions.

1. The human resource management services division shall maintain and ~~publish consistently administer~~ criteria utilized in assessing whether a condition for qualifies qualifying serious or extraordinary conditions as a serious, extreme, or life-threatening condition under North Dakota Century Code section 54-06-14.7 based on best practices.
2. For each shared leave request, the division shall require medical certification from a physician, physician assistant, psychologist, or advanced practice nurse practitioner verifying ~~the severe or extraordinary nature of~~ the medical condition and the expected duration of the condition.
3. Requests for donated leave may not be considered without this specific documentation.
4. Conditions associated with normal pregnancy do not generally qualify as serious, extreme, or life-threatening conditions.

History: Effective July 1, 2022; amended effective 1, 2026.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14.7