

Section	Change
<p>N.D. Admin. Code § 4-01-01-01 Organization of Office</p>	<p>Organization and Function of the Office of management and budget Deletes “(7) State Radio Communications” and corresponding sections related to State Radio Communications. State Radio was transitioned to Department of Emergency Services (Adjutant General) as part of HB1016 during the 59th legislative session.</p> <p>Functions of Office Divisions Deletes telephone and website from each division.</p>
<p>N.D. Admin. Code § 4-07-01-01 History, functions, organization of human resource management services</p>	<p>History of human resource management services. Enhanced the description of the functions of human resource management services to align with broader services human resource management services provides.</p> <p>Organization of human resource management services. Deletes the areas that human resource management services staff are assigned to allow for more flexibility to meet business needs.</p>
<p>N.D. Admin. Code § 4-07-01-03 Methods the public may use to obtain information</p>	<p>Modified the method for public to obtain information from human resource management services from mail to email.</p>
<p>N.D. Admin. Code § 4-07-04-09 Pay grade review process, pay grade exceptions and notifications</p>	<p>Deletes the job evaluation committee determination (JEC) from pay grade exception notification and approval.</p>
<p>N.D. Admin. Code § 4-07-08-02 Reporting to work</p>	<p>Clarifies the ability to work remotely/telework enabled.</p>
<p>N.D. Admin. Code § 4-07-08-06 Employee not scheduled to work</p>	<p>Deletes “Employee not scheduled to work”.</p>
<p>N.D. Admin. Code § 4-07-12-13 Assumption of accrued annual leave</p>	<p>Replaced “county social service” with “Human Service Zones” to align with SB2124 during the 66th legislative session.</p>

<p>N.D. Admin. Code § 4-07-20.1-08 Procedure for appeals of employer actions to human resource management services</p>	<p>Revised procedure for appeals of employer actions to human resource management services to be delivered by electronic means.</p> <p>Revised procedure for human resource management services director to deliver appeal request by electronic means to the office of administrative hearings director.</p> <p>Revised procedure for the administrative law judge to return the completed appeal file to human resource management services by electronic means.</p> <p>Revised procedure for any party to the appeal to request to review the recordings of the hearing by making a request to human resource management services by electronic means.</p>
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**ARTICLE 4-01
GENERAL ADMINISTRATION**

Chapter
4-01-01 Organization of Office

**CHAPTER 4-01-01
ORGANIZATION OF OFFICE**

Section
4-01-01-01 Organization and Functions of the Office of Management and Budget

4-01-01-01. Organization and functions of the office of management and budget.

1. Organization of office.

- a. History. The 1941 legislative assembly appointed a governmental survey commission to study the field of governmental reorganization and make recommendations. Among the recommendations was a single agency to handle the state's fiscal affairs. That study was reviewed by directive of the 1957 legislative assembly. The 1959 legislative assembly established the department of accounts and purchases to become operative in 1961. In 1981 the agency became the office of management and budget. The director is appointed by and serves at the will of the governor. As agency head, the director is vested with control and supervision of the fiscal administration of the executive branch of state government.
- b. Divisions. Within the office of management and budget are seven divisions:
 - (1) Administration.
 - (2) Fiscal management.
 - (3) Human resource management services.
 - (4) Central services.
 - (5) Facility management.
 - ~~(6) Risk management.~~
 - ~~(7)(6) State radio communications.~~

2. Functions of office divisions.

- a. The administration division provides management and support to the divisions within the office of management and budget. Other duties include review of state agency management and organizational structure, and frequent comparison of projected and actual state revenues and expenditures. The director of each division is appointed by and serves at the pleasure of the director of the office of management and budget.
- b. The fiscal management division is responsible for budget preparation and the monitoring of spending after legislative appropriations are made, preparation of the revenue forecasts, processing state financial transactions, including agency payrolls, and preparing the statewide comprehensive annual financial report (CAFR). The fiscal management director and budget analysts prepare the governor's executive recommendation for submission to the legislative assembly. As the sole financial plan for providing state services, the executive budget recommendation is presented to the legislative assembly prior to the convening of each session. Part of the budget process

involves fiscal management staff appearing at hearings for each agency budget request, onsite visits, and comparative analyses. Once the executive budget recommendation has been submitted, the office works closely with the legislative assembly and its committees by explaining the budget or by providing information on other fiscal concerns. During both the legislative session and the legislative council's interim study period, the office of management and budget assists legislators and other key policymakers in resolving budget-related issues. Telephone: (701) 328-2680; web site: <http://www.state.nd.us/fiscal>.

- e.—The human resource management services division provides services relating to establishing and maintaining a unified system of human resource management for the classified service. The division and the state personnel board were created by executive order in 1974 and by the legislative assembly in 1975. The 2003 legislative assembly changed the name of the central personnel division to human resource management services. The division establishes and maintains classification and compensation plans as well as general policies and rules which are binding on the agencies with employees in the classified service. In 1995 the administration of the merit system function was decentralized to those agencies required to have a merit system of personnel administration. The human resource management services division maintains the merit system auditing function and provides consultative services to agencies on a multitude of issues including recruitment, screening, and selection of applicants; performance management; classification; salary administration; discipline; grievances; investigations; appeals; and federal and state employment requirements. In addition, the division develops, coordinates, and conducts training programs; provides mediation services; and administers a cooperative education and internship program. Telephone: (701) 328-3290; TDD: 800-366-6888; web site: <http://www.state.nd.us/hrms>.
- d.—The central services division operates a central purchasing service, maintains a central supply section, serves as the state's distribution point for federal surplus property and clearinghouse for state-owned surplus property, and operates a central printing service. The central services division works with state agencies and vendors to provide the state with the best possible prices for goods and services. Telephone: (701) 328-2780; web site: <http://www.state.nd.us/csd>.
- e.—The facility management division was created July 1, 1991, with the elimination of the director of institutions office. The division manages the physical plant operations, provides capitol tours, operates the central mail bureau, and coordinates event scheduling for all of the buildings located on the one hundred thirty-two-acre capitol complex. It also is responsible for providing space management services for the state agencies located on the capitol complex through its state planner. Telephone: (701) 328-2471; web site: <http://www.state.nd.us/fac>.
- f.—The risk management division was established in 1995 in response to a North Dakota supreme court decision that eliminated the state's sovereign immunity for tort claims. The division's objectives are to implement proactive loss control practices to address the state's exposures to loss, and to appropriately administer claims and lawsuits. The 2001 legislature established the risk management workers' compensation program and assigned the division the duty of administering the single workers' compensation account that consolidated one hundred forty-three state agency accounts, and authorized a one hundred thousand dollar deductible per claim and a cross agency return-to-work program. Telephone: (701) 328-7584; web site: <http://www.state.nd.us/risk>.
- g.—~~State radio was created by an emergency act of the legislative assembly in 1951 to provide coordination, direction, control, development, and implementation of public safety communications systems, as well as the operation and maintenance of those systems through modern state-of-the-art technology. State radio is dedicated to providing efficient~~

~~voice and data communication systems that are operated twenty four hours a day, three hundred sixty five days a year, in the interest of public safety. Telephone: (701) 328-8154; web site: <http://www.state.nd.us/radio>.~~

3. **Inquiries.** General inquiries regarding the office of management and budget may be addressed to the director of the office. Specific inquiries regarding the functions of each division may be addressed to the director of that division.
4. **Personnel roster.** All correspondence to the below-listed persons should be addressed as follows:

Director
Office of Management and Budget
600 East Boulevard Avenue, Dept. 110
Bismarck, North Dakota 58505-0400
(701) 328-4606

Director
Fiscal Management Division
600 East Boulevard Avenue, Dept. 110
Bismarck, North Dakota 58505-0400
(701) 328-4905

Director
Human Resource Management Services Division
600 East Boulevard Avenue, Dept. 113
Bismarck, North Dakota 58505-0120
(701) 328-4735

Director
Central Services Division
600 East Boulevard Avenue, Dept. 118
Bismarck, North Dakota 58505-0420
(701) 328-3494

Director
Facility Management Division
600 East Boulevard Avenue, Dept. 130
Bismarck, North Dakota 58505-0130
(701) 328-4002

Director
Risk Management Division
1600 East Century Avenue, Suite 4
Bismarck, North Dakota 58503-0649
(701) 328-7580

~~Director
State Radio Communications
P.O. Box 5511
Bismarck, North Dakota 58502-5511
(701) 328-8154~~

History: Amended effective March 1, 1982; October 1, 1983; November 1, 1985; October 1, 1987; September 1, 1989; May 1, 1992; February 1, 1993; April 1, 1994; December 1, 1998; August 1, 2004.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

ARTICLE 4-07
ORGANIZATION OF HUMAN RESOURCE MANAGEMENT SERVICES

Chapter	
4-07-01	Organization of Human Resource Management Services
4-07-02	Salary Administration Procedures
4-07-03	Classification Plan
4-07-04	Compensation Plan
4-07-05	Recruitment and Selection
4-07-06	Probationary Period
4-07-07	Working Hours and Holidays
4-07-08	Working and Inclement Weather Conditions
4-07-09	Transfers, Annual Leave and Sick Leave Hours
4-07-10	Performance Management
4-07-11	Reduction-in-Force
4-07-12	Annual Leave
4-07-13	Sick Leave
4-07-14	Funeral Leave and Honor Guard Leave
4-07-15	Leave Without Pay
4-07-16	Jury and Witness Leave
4-07-17	Workers' Compensation and Leave
4-07-18	Service Award Programs
4-07-19	Disciplinary Actions
4-07-20	Grievance Procedures
4-07-20.1	Appeals of Employer Actions
4-07-20.2	Appeals of Discrimination or Reprisal
4-07-21	Alternative Dispute Resolution
4-07-22	Merit System Vacancy Announcements
4-07-23	Merit System Agencies and Veterans' Preference Documentation [Repealed]
4-07-24	Merit System Applications and Appeals
4-07-25	Merit System Examinations
4-07-26	Merit System Registers [Repealed]
4-07-27	Merit System Certificates of Eligibles [Repealed]
4-07-28	Merit System Employment Status
4-07-29	Merit System Internal Applicant Review [Repealed]
4-07-30	Merit System Promotions
4-07-31	Merit System Transfers
4-07-32	Merit System Reclassifications [Superseded]
4-07-33	Merit System Reinstatements
4-07-34	Merit System Oversight and Audit Procedures
4-07-34.1	Local County Social Service Merit Systems [Repealed]
4-07-35	Severability
4-07-36	Training and Tuition Reimbursement
4-07-37	Shared Leave

CHAPTER 4-07-01
ORGANIZATION OF HUMAN RESOURCE MANAGEMENT SERVICES

Section	
4-07-01-01	History, Functions, Organization of Human Resource Management Services
4-07-01-02	Organization and Functions Subject to Chapter 28-32
4-07-01-03	Methods the Public May Use to Obtain Information

4-07-01-01. History, functions, organization of human resource management services.

1. History of human resource management services.

- a. The 1975 legislative assembly passed a Central Personnel System Act, codified as North Dakota Century Code chapter 54-44.3. The Act created the central personnel division as well as the state personnel board. The division was to establish and maintain classification and compensation plans as well as establish general policies and rules, which were to be binding on the affected agencies, relating to a unified system of personnel administration for the employees in the classified service of the state.
- b. From its beginning in 1975, the central personnel division developed general personnel policies in response to the requirements for a unified system of personnel administration, requests from the state personnel board, requests from agencies or other officials in the executive branch, changed requirements in state or federal laws, and various decisions of the courts. These policies were discussed at meetings of the state personnel board. If a particular policy was approved by the board, the division would then act to include it within the North Dakota personnel policies manual. Policies approved and adopted in this way were then distributed to all state agencies.
- c. The policies included in the North Dakota personnel policies manual were to be followed by all agencies with classified employees. More specifically, merit system agencies were to strictly follow the policies, but nonmerit system agencies were advised that the policies formed a "base" for the development of the agencies own policies and procedures.
- d. In July of 1981 then Governor Allen Olson issued executive order number 1981-10. That executive order portrayed the North Dakota personnel policies manual as providing the assurance that classified employees would be treated fairly and uniformly if the policies were followed. The executive order identified the state personnel board as the agency that would hold public meetings to receive comments and approve revisions to the policies. Governor Olson also ordered that agencies headed by a gubernatorial appointee adhere to and follow the policies, including the statewide appeal mechanism.
- e. However, by late 1986 that manner of personnel policy implementation and its "legality" and effect on various agencies had been challenged before the North Dakota supreme court. By 1990 in order for the division to carry out its statutory purpose of establishing a unified system of personnel administration for the classified service of the state, it was apparent that certain policies had to be adopted as rules in accordance with North Dakota Century Code section 28-32-02.
- f. In 2003 the legislative assembly approved changing the name of the central personnel division to human resource management services.

~~2. Functions of human resource management services. The Human Resource Management Services Division provides consultative services to agencies on a multitude of human resource areas of focus: talent acquisition, total rewards, talent management and development, operations and digital services, and HR business partners. Through these areas of focus, the division collaborates with agencies to address a variety of functions including, but not limited to recruitment, performance management, classification, salary administration, discipline, grievances, investigations, appeals, and federal and state employment requirements. In addition, the division develops, coordinates, and conducts training and leadership development programs; plans, coordinates, and leads activities for the statewide human resource information system; and administers a cooperative education and internship program. The division provides services related to establishing and maintaining a unified system of human resource management for the classified service. The division establishes, maintains, and revises classification and compensation plans. It assigns position classifications and pay grades and establishes and maintains required records for all~~

~~employees in the classified service. The division certifies appeals on employee grievances relating to demotion, suspension without pay, reduction in force, forced relocation, reprisal action, discrimination, merit system qualification, and dismissal. It also certifies appeals from applicants for positions in the classified service who allege discrimination. It assists appointing authorities and agencies with selection and grievance procedures. The division coordinates and conducts training programs. It ensures salaries are paid consistent with the state's classification system, compensation plan, and salary administration policy, and consults with state agencies regarding salary administration. It establishes and administers a cooperative education or internship program open to college students. The division provides information, consultative advice, tools and methodology, and other services to promote the development of a unified~~

~~3.2. system of human resource administration.~~ The division also serves as secretariat to the state personnel board.

4.3. Organization of human resource management services.

- a. Human resource management services is a division of the office of management and budget. The division is separate from the state personnel board, although the division and board work closely together on classification and pay grade issues. The division and the board each adopts its own rules.
- b. Human resource management services has a director and a staff. The director is appointed by and serves at the pleasure of the director of the office of management and budget. The director is responsible for the performance of the division as it exercises its duties and functions. A staff of professional and administrative employees assists the director. ~~The staff are assigned to one of the following areas: administration, classification and compensation, employment services, and training and development.~~

History: Effective March 1, 1991; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-11, 54-44.3-12

4-07-01-02. Organization and functions subject to chapter 28-32.

The portions of human resource management services' organization and functions that are subject to North Dakota Century Code chapter 28-32 are those that involve its authority to adopt policies and rules relating to a unified system of personnel administration which impose requirements on other agencies. Human resource management services has the authority to adopt policies, rules, and procedures in three areas:

1. Subsection 1 of North Dakota Century Code section 54-44.3-12 provides the authority to establish general policies, rules, and regulations which are binding on the agencies affected, including those grant-aided agencies that receive federal funds. The rules referred to in this regard must ensure fairness, enhance greater uniformity in personnel management matters, and include rules on establishing and maintaining the classification and compensation plans.
2. Subsection 7 of North Dakota Century Code section 54-44.3-12 provides the authority to develop procedures that must be followed by all state agencies and institutions regarding salary administration for all employees in the classified service.
3. Subsection 13 of North Dakota Century Code section 54-44.3-12 provides the authority for the director of human resource management services to adopt rules, subject to the approval of the board, to ensure compliance with and resolve compliance issues relating to agencies required by state or federal law or rule to be subject to a merit personnel system.

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

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

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

4-07-01-03. Methods the public may use to obtain information.

The public may obtain information, furnish information, or make requests to human resource management services concerning any of its functions or rules by writing to hrms@nd.gov or:

~~Human Resource Management Services
Capitol Building 14th Floor
600 East Boulevard Avenue, Dept. 113
Bismarck, ND 58505-0120~~

Telephone inquiries may be made by calling 701-328-3290 between eight a.m. and five p.m. Monday through Friday.

History: Effective March 1, 1991; amended effective July 1, 1995; November 1, 1996; July 1, 2004.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-12

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CHAPTER 4-07-04 COMPENSATION PLAN

Section

4-07-04-01	Scope of Chapter
4-07-04-02	Definitions
4-07-04-03	Class Evaluation Process
4-07-04-03.1	Correcting Class Evaluation Interpretation Inconsistencies [Repealed]
4-07-04-04	A Written Request to Review a Pay Grade
4-07-04-05	Additional Information Required
4-07-04-06	Information and Forms Required [Repealed]
4-07-04-07	An Employee May Request a Review
4-07-04-08	An Appointing Authority Shall Consider an Employee's Request [Repealed]
4-07-04-09	Pay Grade Review Process, Pay Grade Exceptions, and Notification
4-07-04-09.1	Effective Date of Pay Grade Assignment
4-07-04-09.2	Request for Reconsideration of Pay Grade Assignment [Repealed]
4-07-04-10	Pay Grade Appeal to the Director [Superseded]
4-07-04-11	Pay Grade Exception [Repealed]
4-07-04-12	Periodic Review

4-07-04-01. 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

4-07-04-02. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 54-44.3 and section 4-07-02-01, except "compensation plan" means the listing of all the pay grades used in the classified service and the pay ranges assigned to each grade.

History: Effective September 1, 1992; amended effective July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

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

4-07-04-03. Class evaluation process.

The director, human resource management services, shall develop, implement, and maintain a class evaluation process to evaluate and assign an appropriate pay grade to all classes in the classification plan.

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)

4-07-04-03.1. Correcting class evaluation interpretation inconsistencies.

Repealed effective July 1, 2014.

4-07-04-04. A written request to review a pay grade.

A written request to review a pay grade may be submitted to human resource management services by the appointing authority only if one of the following reasons apply:

1. The appointing authority is experiencing recruiting problems due to the assigned pay grade.
2. The appointing authority is experiencing retention problems due to the assigned pay grade.
3. The appointing authority can provide employment market data that shows an extreme variance between market pay and the classified salary range.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

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

4-07-04-05. Additional information required.

An appointing authority requesting a pay grade review shall furnish additional information to human resource management services at the time the request is made. The additional information must include:

1. A statement of the problem.
2. Up-to-date job description questionnaires.
3. Any available statistical data that relates to the problem encountered, i.e., turnover rate, recruiting costs, training costs, etc.
4. Details of efforts to resolve the problem through alternative methods.
5. Any available analysis of the current use of the salary range assigned to the existing pay grade.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

General Authority: NDCC 54-44.3-12

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

4-07-04-06. Information and forms required.

Repealed effective July 1, 2004.

4-07-04-07. An employee may request a review.

An employee may request that an appointing authority submit the pay grade assigned to the employee's class to human resource management services for review if the employee demonstrates that one of the reasons in section 4-07-04-04 applies to the employee's classification. An appointing authority shall consider an employee's request to submit the pay grade assigned to the employee's class to human resource management services for review. The appointing authority shall, within sixty calendar days, determine if any of the reasons in section 4-07-04-04 apply and if the information required in section 4-07-04-05 is available. If any of the reasons apply and if the information is available, the appointing authority shall submit the request to human resource management services for review. If none of the reasons apply, the appointing authority shall notify the employee the request will not be submitted to human resource management services.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014.

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

4-07-04-08. An appointing authority shall consider an employee's request.

Repealed effective July 1, 2014.

4-07-04-09. Pay grade review process, pay grade exceptions, and notifications.

Upon receipt of a pay grade review request, human resource management services will initiate review of the pay grade or classification as appropriate. ~~Human resource management services will ensure that complete job and statistical information is gathered and prepared for presentation to the job evaluation committee for determination.~~ Human resource management services ~~and the job evaluation committee~~ may assign a pay grade that is higher than that determined by the application of the class evaluation system. This may be done when the pay grade assigned to a class has not resolved significant problems in the recruiting or retention of qualified individuals for a class. When a pay grade exception is assigned to a class, the grade must be identified as such and the appointing authority and all employees in the class must be notified. If the review is not completed within sixty calendar days, human resource management services will notify the appointing authority of the reasons for an extension and the anticipated schedule for completion of the review. If either the employee or appointing authority disagree with the ~~job evaluation committee's~~ decision, an appeal may be made as provided in chapter 59.5-03-02.1.

History: Effective September 1, 1992; amended effective November 1, 1996; July 1, 2004; July 1, 2014; April 1, 2020.

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

4-07-04-09.1. Effective date of pay grade assignment.

The effective date of a pay grade assignment is the date specified by the appointing authority. However, the date may not be earlier than the month in which the change is approved pursuant to section 4-07-04-09. An earlier effective date may be applied with written approval from the director of human resource management services.

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

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

4-07-04-09.2. Request for reconsideration of pay grade assignment.

Repealed effective July 1, 2014.

4-07-04-10. Pay grade appeal to the director.

Superseded by section 4-07-04-09.2 effective November 1, 1996.

4-07-04-11. Pay grade exception.

Repealed effective July 1, 2014.

4-07-04-12. Periodic review.

Classes assigned a pay grade exception are subject to periodic review by human resource management services. Such classes shall be reviewed no less than once every five years to verify the

appropriateness of the assigned pay grade. The director, human resource management services, shall notify the respective appointing authorities and all employees in the class that a review is being conducted. The appointing authority and employees may submit information for the review.

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

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-08 WORKING AND INCLEMENT WEATHER CONDITIONS

Section	
4-07-08-01	Scope of Chapter
4-07-08-02	Reporting to Work
4-07-08-03	Reporting Late or Leaving Early
4-07-08-04	Key Positions
4-07-08-05	No Pay Reduced
4-07-08-06	Employee Not Scheduled to Work

4-07-08-01. 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)

4-07-08-02. Reporting to work.

During inclement weather conditions unless otherwise notified by an authorized official, each employee shall report to work as scheduled at the appointed time. Employees who are authorized and ~~able to work remotely~~ telework enabled (the ability to do all or part of their job from home or a remote location) are expected to follow a normal work schedule.

History: Effective September 1, 1992; amended effective July 1, 2022.

General Authority: NDCC 54-44.3-12

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

4-07-08-03. Reporting late or leaving early.

An employee who either reports to work late, or who leaves work early during inclement weather conditions while the employee's place of work remains open, must be charged appropriate leave for the time not worked.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

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

4-07-08-04. Key positions.

An appointing authority may designate key positions. Individuals occupying those positions shall provide continuing services or essential services as required during emergency or inclement weather conditions when the agency is closed by an authorized official. An individual occupying a key position may be provided extra compensation, in addition to the regular pay rate, for performing required work during a period when agency facilities or normal operations have been closed or curtailed due to emergency or inclement weather conditions.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

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

4-07-08-05. No pay reduced.

An appointing authority may not reduce the pay of an employee who is released from work due to an emergency or inclement weather conditions by an authorized official for those hours the employee was not required to work.

History: Effective September 1, 1992.

General Authority: NDCC 54-44.3-12

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

~~**4-07-08-06. Employee not scheduled to work.**~~

~~An employee not scheduled to report for work at an agency closed due to emergency or inclement weather conditions may not be provided additional compensation or time off due to the agency closing. However, an employee who had previously been granted leave for time off on a day when an agency is subsequently closed due to emergency or inclement weather conditions may not be charged leave for that day.~~

~~**History:** Effective September 1, 1992.~~

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

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

CHAPTER 4-07-12 ANNUAL LEAVE

Section	
4-07-12-01	Scope of Chapter
4-07-12-02	Definitions
4-07-12-03	Annual Leave Accrual
4-07-12-04	Annual Leave Accrual Schedule
4-07-12-05	Accrual for Employment for a Fraction of a Month
4-07-12-06	Annual Leave Taken in Fifteen-Minute Increments [Repealed]
4-07-12-07	Approval Required
4-07-12-08	Annual Leave Limit
4-07-12-09	Change of Cutoff Date [Repealed]
4-07-12-10	Pay During Employment
4-07-12-11	Credit for Temporary Service
4-07-12-12	Annual Leave and Reemployment
4-07-12-13	Assumption of Accrued Annual Leave

4-07-12-01. 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)

4-07-12-02. 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.
2. "Regular employee" means a person who has completed the probationary period and who is in a position 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)

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

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

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)

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

State agencies are advised that the following annual leave accrual schedule is required for use by each state agency subject to this chapter:

Years of Service

Hours Earned Per Month

Zero through three	Eight
Four through seven	Ten
Eight through twelve	Twelve
Thirteen through eighteen	Fourteen
Over eighteen	Sixteen

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.

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 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.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 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.

General Authority: NDCC 54-44.3-12

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

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

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. State agencies covered by the North Dakota merit system shall accept all or a part of accrued annual leave hours the employee requests to transfer of a ~~county social service~~ Human Service Zones employee in a position classified by human resource management services.

A ~~county social service~~ Human Service Zone board may accept all or a part of accrued annual leave hours an employee requests to transfer from another ~~county social service~~ 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.

General Authority: NDCC 54-44.3-12

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

CHAPTER 4-07-20.1 APPEALS OF EMPLOYER ACTIONS

Section

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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 the date transmitted by electronic means, or absent proof of the date of mailing or delivery of electronic means, the date of actual delivery.
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 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; 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.

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 ~~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 or delivery 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 transmitted or delivery~~ by electronic means, ~~or hand delivery.~~
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.

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

Law Implemented: NDCC 54-44.3-12.2