

Section	Change
N.D. Admin. Code § 4-07-37-02 Shared Leave – Definitions	Revised the definition of “eligible employee” to remove “with over six months continuous service with the state” and “in probationary status” based on SB 2393 and NDCC 54-06-14.7 .
N.D. Admin. Code § 4-07-38 Family Medical Leave	Proposed new Chapter based on NDCC 54-52.4 .

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 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 state employee ~~with over six months continuous service with the state~~. It does not include employees ~~in probationary status or 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 July 1, 2024.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14.7

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

The human resource management services division of the office of management and budget shall administer a state leave sharing program for permanent 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 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 serious or extraordinary illness, injury, impairment, or physical or mental condition.

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.

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.

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.

An eligible employee may request and use donated annual leave or sick leave for the purpose of donating an organ or bone marrow.

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.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14.7

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

The human resource management services division shall maintain and consistently administer criteria for qualifying serious or extraordinary conditions based on best practices. 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. Requests for donated leave may not be considered without this specific documentation.

History: Effective July 1, 2022.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-06-14.7

CHAPTER 4-07-38
FAMILY MEDICAL LEAVE

Section	
4-07-38-01	Scope of Chapter
4-07-38-02	Definitions
4-07-38-03	Uses of family medical leave
4-07-38-04	Position upon return from leave

4-07-38-01. 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 July 1, 2024.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-52.4

4-07-38-02. Definitions.

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

1. "Employee" means a state employee, who has been employed by the employer for at least twelve months, and who has worked at least one thousand two hundred fifty hours for the employer over the previous twelve months.
2. "Employer" means the state but does not include any political subdivision of the state.
3. "Intermittently" means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.
4. "Serious health condition" means a disabling physical or mental illness, injury, impairment, or condition involving:
 - a. Inpatient care in a hospital, long-term care facility, or hospice program; or
 - b. Outpatient care that requires continuing treatment by a health care provider.
5. "Spouse" means an employee's husband or wife.
6. "Rolling twelve-month period" means the twelve-month period measured backward from the date an employee uses any family medical leave.

History: Effective July 1, 2024.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-52.4

4-07-38-03. Uses of family medical leave.

1. An employee shall be granted a request for family medical leave of absence consistent with North Dakota Century Code section 54-52.4-02
2. An employee may take family medical leave, for any combination of reasons, in any rolling twelve-month period for not more than twelve workweeks, except when leave is under North Dakota Century Code section 54-52.4-02 subdivision f of subsection 1, the employee is limited to a combined twenty-six workweeks of leave in any rolling twelve-month period and is limited to once per service member or veteran per serious injury or illness. When medically necessary,

employees may take family medical leave intermittently or on a reduced work schedule for their own serious health condition, the serious health condition of a family member, or to care for a covered service member with a serious injury or illness.

3. An employee and spouse who work for the same employer are entitled to a combined total of twelve weeks of family medical leave if taken under North Dakota Century Code section 54-52.4-02 subdivisions a-e of subsection 1 and a combined total of twenty-six weeks of family medical leave if taken under subdivision f of subsection 1.
4. Family medical leave runs concurrently with all other available leave including paid or donated leave.
5. During a period that an employee takes family medical leave, the employer shall continue any group health insurance coverage for its employees and their dependents available to the employee under the conditions that applied immediately before the family medical leave began.

History: Effective July 1, 2024.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-52.4