



Employment Policies for the State of North Dakota

GRIEVANCE

Effective Date: 01/25/21

(This policy is a template that each agency should modify in designated places. All places highlighted in yellow are for agency personalization. The size and complexity of the agency will determine the number of steps and other details that are appropriate for each agency. All agencies should have a grievance policy in place.)

SECTION 1. SCOPE OF CHAPTER

INTRODUCTION

The State of North Dakota, as the employer, provides a means for employees to have their complaints or grievances heard and resolved at the level of supervision most directly associated with the employee's work unit.

These internal grievance and appeal procedures serve as a supplement to the administrative rules in N.D. Admin. Code chapters 4-07-20, 4-07-20.1, and 4-07-20.2 and provide a complete process for all matters not appealable to Human Resource Management Services ("HRMS").

An employee of the State of North Dakota may file a work-related complaint or grievance by following the procedures outlined in this policy. If the complaint or grievance is not appealable to HRMS, the decision of the Agency Director or designee is final.

It is the responsibility of all parties in a complaint or grievance action to be fully aware of the time limits imposed by this policy and the potential consequences of failing to meet those limits.

The ability of non-classified or probationary employees to grieve an employer action does not create a property interest in employment.

EMPLOYEE RESPONSIBILITIES

Employees are responsible for complying with the procedures in this policy and all additional procedures required by the N.D. Admin. Code for filing a grievance or appeal.

Prior to implementing the formal grievance procedure, an employee may first consult with agency Human Resources or HRMS.

An employee may be assisted by a representative of his or her choosing at any point in the process.

EMPLOYER RESPONSIBILITIES

Supervisors and managers must make a good faith effort to resolve an employee complaint or grievance at their level. They must attempt to provide a fair and reasonable resolution to employee complaints or grievances within a reasonable time period. The immediate supervisor may wish to confer with the next higher-level supervisor in the process of resolving the issue. When the resolution sought is not within the authority of the supervisor or manager to grant, the issue must be reviewed with the Agency Director or designee.



Employment Policies for the State of North Dakota

Throughout the grievance procedure, it is the responsibility of the employer to respond to the issues raised in the employee complaint or grievance. Retaliation against an employee for filing a grievance is strictly prohibited.

ALTERNATIVE DISPUTE RESOLUTION OR MEDIATION

Alternative dispute resolution, commonly referred to as mediation, may be used to resolve disputes that occur within the agency. All parties involved in the dispute must agree to the use of mediation before mediation begins.

During the time period when employees involved in a dispute are utilizing mediation, the time limits of the internal grievance procedure must be suspended. If a resolution is not agreed to by the participants at the conclusion of the mediation process, the time limits of the agency grievance procedure must be activated. The mediator shall determine the date of conclusion of the mediation process and notify the parties.

Mediation records are exempt from open records in accordance with N.D.C.C. § 54-44.3-14.1.

TIME LIMITS

The steps comprising the internal grievance process contain time limitations. An employee should be allowed a reasonable amount of time to process a grievance during regular working hours without loss of pay. Occasionally, situations will arise beyond the control of management or the employee that will prevent compliance with the time limitations. Time limitations may be extended for employees by the appropriate Agency Director or designee.

Requests for extensions must be made in writing and received by the appropriate Agency Director or designee prior to the established deadline.

SECTION 2. GRIEVANCE PROCEDURE

GRIEVANCE PROCEDURE FOR EMPLOYER ACTIONS

An employer action is considered to be a decision to dismiss, demote, or suspend an employee without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment.

Eligible Employees:

- a. A regular employee is given a formal opportunity to respond prior to a decision to dismiss, demote, or suspend the employee without pay. Following the final decision in the pre-action process, the employee may grieve the decision through the internal grievance process. A regular employee may appeal the Agency Director's or designee's decision as outlined in step three of this section.
- b. An employee in probationary status may grieve a decision to dismiss, demote, or suspend the employee without pay through the internal grievance process. A probationary employee may not appeal a lawful dismissal, demotion, or suspension without pay from employment through HRMS except claims of discrimination or reprisal. Nothing in this provision changes the at-will employment status of an employee in probationary status.



Employment Policies for the State of North Dakota

- c. A non-classified employee may grieve a decision to dismiss, demote, or suspend the employee without pay through the internal grievance procedure. Grievances and appeals from non-classified employees are not appealable beyond the Agency Director or designee, except in claims of reprisal. Nothing in this provision changes the at-will employment status of a non-classified employee.

There are three steps to the grievance process involving employer actions. Grievances are to proceed until the employee is satisfied, does not file a timely appeal, or exhausts the right to file a grievance or appeal.

Failure on the part of the employee to grieve the decision within the time prescribed shall be construed to be acceptance of the determination at that point and the same grievance shall not be accepted thereafter.

Step One:

A regular employee who is grieving the result of an employer action may file a written complaint. Unless a waiver of the agency grievance process is obtained under the provisions of Section 3 of this policy, the written grievance must be filed with the Agency Director or designee within 15 working days from the date of notice of the employer action, from the date of the reprisal action, or from the date of the alleged discriminatory action. The employee must also provide a copy of the grievance to the person who made the decision being grieved. The employee should file the written grievance using Employee Grievance form (SFN 18409).

Failure to begin the procedure within the time limitations may cause the employee to lose the right to appeal to HRMS and have their appeal heard by the Office of Administrative Hearings (OAH). The Agency Director or designee will acknowledge receipt of the grievance within five (5) working days of receipt and request from the person who made the decision a complete copy of all material upon which the decision was based, including any written information provided to management by the employee prior to the decision. Generally, the information considered will be confined to the information submitted. However, the Agency Director or designee may determine to further investigate the issue(s).

Step Two:

If needed, an investigation will be conducted within 30 working days of the receipt of the complaint. The Agency Director or designee will notify the employee within five (5) working days of receipt of the complaint if an investigation will be conducted. The Director or designee will provide a response to the employee within 15 working days following the completion of the investigation report.

If it is determined that an investigation is not needed, the Agency Director or designee will review the written material and determine whether there was a reasonable basis to believe the allegations were true and support the action of management. The Agency Director or designee will issue a written response within 15 working days of the Director's receipt of the written supporting information. The written decision of the Director or designee ends the internal grievance procedure.

Step Three:



Employment Policies for the State of North Dakota

The employee, if dissatisfied with the response or action taken by the Agency Director or designee, or if no response is received from the Agency Director or designee within the response period, may appeal the complaint to HRMS and have their appeal heard by OAH.

The appeal must be filed with the HRMS director by completing an Appeal to HRMS Form (SFN 3096). The appeal form must be delivered, mailed, or transmitted by electronic means and must be received in the HRMS office by 5:00 p.m. within 15 working days of the date of service of notice of the results of the agency grievance procedure or within 15 working days from the date of service of notice of the waiver of the grievance procedure. The date of service of 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 Director or designee 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 HRMS director or designee shall within two working days submit a written request to the director of OAH to conduct a hearing on behalf of HRMS and shall forward a copy of the appeal form to the Director or designee.

OAH will consider the appeal in accordance with N.D. Admin Code 4-07-20.1-08.

SECTION 3.

GRIEVANCE PROCEDURE FOR NON-EMPLOYER ACTIONS

(Non-employer actions are considered instances of actions by customers, vendors, or other third parties in the workplace that are considered to be discriminatory or harassing and the employer had the opportunity to respond but did not act).

The Internal Grievance process is for grieving complaints with the agency up through the Agency Director. Internal Grievances are to proceed to each successive step until the employee is satisfied with the outcome at that step, does not file a timely appeal, or exhausts the right to file grievance or appeal.

Failure of the employee to grieve the agency decision to the next step in the process within the time prescribed shall be considered acceptance of the determination. The grievance will be considered completed and the same grievance shall not be accepted thereafter.

Grievances may be brought directly to the Agency Director or designee when they involve claimed discriminatory or retaliatory behavior or when the complaint involves the employee's supervisor. The employee may also contact HRMS for assistance with the issue. If needed, a workplace investigation may be conducted within 30 days.

Step One:

An employee who has a complaint should first discuss it with their immediate supervisor. If discussion and any subsequent action taken by the supervisor fails to effectively resolve the complaint, the employee may file a written grievance with the immediate supervisor within five (5) working days of the incident or grievable action,



Employment Policies for the State of North Dakota

or within five (5) working days after informal discussion with the immediate supervisor has failed to resolve the grievance. The employee should file the written grievance using Employee Grievance form (SFN 18409).

The supervisor, upon receipt of a written grievance, shall inform the Agency Director or designee and must respond to the complaint in writing, within five (5) working days of the receipt of the written complaint from the employee.

Step Two:

The employee, if dissatisfied with the response or action taken by the immediate supervisor, or if no response is received from the immediate supervisor within five (5) working days after receipt of the employee's written grievance, may continue the formal grievance process by filing the grievance form with the (Insert Agency Title) or designee within five (5) working days from receipt of the immediate supervisor's response or within five (5) working days following the supervisor's response period, if no response is received.

The (Insert Agency Title) or designee must receive the written grievance within five (5) working days from the date of service of notice of the immediate supervisor's response. The date of service of notice is the date the notice was mailed, or the date transmitted by electronic means, or absent proof of the date of the 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 (Insert Agency Title) or designee, upon receipt of a written grievance, shall notify the employee's supervisor of the receipt of the complaint, properly review the issue, and give a written response to the employee within 10 working days of receipt of the grievance from the employee.

Step Three (The following step is only applicable in agencies with more than two levels of management):

The employee, if dissatisfied with the response or action taken by the (Insert Agency Title), or if no response is received from the (Insert Agency Title) within 10 working days after receipt of the written grievance, may continue the formal grievance process by filing the grievance form with the Agency Director or designee. The employee must file the grievance with the Agency Director or designee within five (5) working days from the date the employee receives the (Insert Agency Title)'s response or within five (5) working days following the expiration of the (Insert Agency Title)'s response period if no response is received.

The Agency Director or designee must receive the continued grievance within five (5) working days from the date of service of notice of the (Insert Agency Title)'s response. The date of service of notice is the date the notice was mailed, 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 Agency Director or designee shall notify the employee's (Insert Agency Title) of receipt of the grievance, properly review the issue, and give a final written response to the employee within 15 working days of receipt



Employment Policies for the State of North Dakota

of the complaint from the employee. The final written decision of the Agency Director or designee ends the agency internal grievance procedure.

Investigations:

If needed, an investigation will be conducted within 30 working days of the receipt of the complaint. The Agency Director or designee will notify the employee within five (5) working days of receipt of the complaint if an investigation will be conducted. The Director or designee will provide a response to the employee within 15 working days following the completion of the investigation report.

If it is determined that an investigation is not needed, the Agency Director or designee will review the written material and determine whether there was a reasonable basis to believe the allegations were true and support the employee's allegation or support the action of management. The Agency Director or designee will issue a written response within 15 working days of the Director's receipt of the written supporting information. The written decision of the Director or designee ends the internal grievance procedure.

SECTION 4.

WAIVER OF AGENCY GRIEVANCE PROCESS

An agreement to waive the agency grievance procedure and appeal directly to HRMS to have the appeal heard by OAH is allowed if both the employee and the Agency Director or designee agree, in writing, to waive the procedure. Upon obtaining the waiver, the employee may appeal directly to HRMS in accordance with N.D. Admin Code 4-07-20.1-08.

The employee's waiver request must be in writing, as must be the Agency Director's or designee's approval or denial of the waiver request. The employee must use Employee Request for Waiver of Internal Agency Grievance Procedure form (SFN 53730). The Director or designee and the employee must sign form SFN 53730 within 15 working days from the date of the employer action. If the waiver is approved, the employee may file a written appeal directly to HRMS to have their appeal heard by OAH. The appeal must be delivered, mailed, or transmitted by electronic means and must be received in the HRMS office by 5:00 p.m. within 15 working days from the date of the approved waiver. An additional 15 working days is not available if the requested waiver is denied. Therefore, the employee should act early to allow a possible waiver denial and still allow time to initiate the internal grievance process within 15 working days of the employer action.

LIMITATIONS FOR REDUCTION-IN-FORCE APPEALS

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 N. D. Admin. Code § 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 N.D.C.C § 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 N.D. Admin. Code § 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



Employment Policies for the State of North Dakota

N.D.C.C. § 14-02.4-01. The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with the agency.

SECTION 4.

CLASSIFICATION AND PAY GRADE APPEALS

An appeal of any classification action or pay grade assignment must be submitted and processed in accordance with current rules in N.D. Admin. Code ch. 4-07-03, 4-07-04, and N.D. Admin. Code ch. 59.5-03-02. Individuals may contact agency Human Resources for interpretation and guidance in initiating a classification or pay grade appeal.

PERFORMANCE EVALUATION APPEALS

Performance evaluations are not grievable beyond the next higher-level supervisor unless the performance results in demotion, dismissal, or other loss of benefits or pay; or the employee alleges discrimination or reprisal in the review. Alleged discrimination or reprisal may be grievable using the agency's internal grievance procedure.

SECTION 5.

DISCRIMINATION GRIEVANCE PROCEDURE FOR APPLICANTS

The State has established a grievance procedure for applicants for positions in state government and employee applicants who believe they have been subject to discrimination on the basis 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. These procedures are a supplement to the rules of N.D. Admin. Code § 4-07-20.2-04.

PROCEDURE FOR APPLICANTS

An applicant with an alleged discrimination complaint may file a grievance with the Agency Director or designee. The grievance must be in writing and filed within 15 working days of the alleged discriminatory action. If needed, an investigation will be conducted. A response of the Agency Director or designee will be provided to the complainant within 15 working days from the receipt of the complaint or 15 working days from the completion of the investigation report if an investigation was deemed necessary. The decision of the Agency Director or designee ends the agency administrative complaint process. Grievances from applicants for non-classified jobs are not appealable beyond the Agency Director or designee.

If an applicant for a classified job is dissatisfied with the decision of the Agency Director or designee, or if no response is received from the Agency Director or designee within the 15 working day response period, the applicant may file an appeal with the director of HRMS under the provisions of N.D. Admin. Code ch. 4-07-20.2.



Employment Policies for the State of North Dakota

PROCEDURE FOR EMPLOYEES WHO ARE APPLICANTS

For employees who are applicants, unless a waiver is obtained in accordance with Section 3 of this policy, the complaint must be filed with the Agency Director or designee.

If needed, an investigation will be conducted within 30 working days following the filing of the complaint. The applicant will be notified within five (5) working days of the filing of the complaint that an investigation will be conducted. A response of the Agency Director or designee will be provided to the applicant within 15 working days following completion of the investigation report. The decision of the Agency Director or designee ends the agency administrative complaint process.

If an applicant for a classified job is dissatisfied with the decision of the Agency Director or designee, or if no response is received from the Director or designee within the 15 working day response period, or if a waiver of the agency internal grievance process is obtained in accordance with Section 3 of this policy, the applicant may file an appeal with the director of HRMS under the provisions of N.D. Admin. Code ch. 4-07-20.2. The appeal form must be delivered, mailed, or transmitted by electronic means and must be received in the HRMS office by 5:00 p.m. within 15 working days of service of the notice of results of the agency grievance procedure or within 15 working days from the date of the waiver. The date of service of 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 HRMS Director or designee 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.

SECTION 6. REPRISAL

DEFINITION

“Reprisal” means an unfavorable employment-related action taken against an applicant or employee by an appointing authority for appealing to HRMS or the State Personnel Board; for exercising the employee’s rights under the Public Employee Relations Act, N.D.C.C. 34-11.1-04; for testifying before a legislative committee; or for requesting timely assistance under the employee assistance program.

INTRODUCTION

Acts or threats of reprisal (retaliation) are a violation of agency policy.

There are three essential elements of a retaliation claim:

- 1) engaging in a legally protected activity.
- 2) an adverse employment action, such as suspension, demotion, or termination; and
- 3) a causal connection between engaging in the protected activity and the adverse employment action. Other examples of adverse employment actions include but are not limited to harassment, intimidation, threats, or coercion.

Reprisal against an applicant for a classified position is prohibited.



Employment Policies for the State of North Dakota

Reprisal against an employee who seeks assistance from HRMS, the State Personnel Board, or through the employee assistance program; files a claim of discrimination, including sexual harassment; exercises rights under the Public Employee Relations Act; or testifies before a legislative committee, is prohibited.

Direct or indirect reprisal against anyone who, in good faith, raises or points out workplace compliance related violations or issues is also prohibited.

There shall be no reprisal against any participant or witness in a workplace investigation or a complaint, grievance, or compliance violation. Any employee who retaliates against another employee in violation of the law and/or this policy is subject to disciplinary action up to and including termination of employment.

The agency requires the reporting of problems and prohibits reprisal for reporting such problems. Allegations of reprisal will be investigated.

An employee who has a complaint of reprisal by anyone at work, including any supervisor, coworker, or the public, must report such conduct to his or her supervisor immediately. If the complaint involves the employee's supervisor, or if the employee for any reason is uncomfortable reporting to the immediate supervisor, the employee must report the incident directly to a (Insert Agency Title) or the Agency Director. The employee may also contact HRMS for assistance with the issue.

An applicant for a classified position who alleges reprisal may file a grievance with the Agency Director or designee. The grievance must be in writing and filed within fifteen (15) working days of the alleged reprisal action. An investigation will be conducted. A response of the Agency Director or designee will be provided to the applicant within 15 working days following completion of the investigation report.

If the applicant for a classified position is dissatisfied with the decision of the Agency Director or designee, or if no response is received from the Agency Director or designee within the 15 working day response period, the applicant may file an appeal with the director of HRMS under the provisions of N.D. Admin. Code ch. 4-07-20.2.