

# Guide for Administrative Appeals to Human Resource Management Services

This guide is prepared as a reference for individuals who wish to appeal an employer action or discrimination to Human Resource Management Services. The appropriate legal references are found in NDCC Chapter 28-32, NDCC section 54-44.3-12.2, and NDAC Chapters 4-07-20.1 and 4-07-20.2.

**This guide is not meant to be all-inclusive, nor is it intended to be used as a substitute for legal advice.** An individual who appeals an action to Human Resource Management Services has the right to represent him/herself, or to be represented by an attorney who is admitted to the Bar of the State of North Dakota, or to be represented by another employee or representative chosen by the employee involved in the proceeding.

If additional information is required regarding the appeals process, please direct inquiries to the Director of Human Resource Management Services, 600 East Boulevard Avenue, Dept. 113, Bismarck ND 58505-0120; telephone (701) 328-3293, TTY 1-800-366-6888.

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## WHO MAY FILE AN APPEAL?

### Permanent, Classified Employees

Classified employees who have successfully completed a probationary period may file an appeal to Human Resource Management Services for the following employer actions:

- Demotion
- Suspension without pay
- Forced relocation
- Reduction-in-force
- Reprisal action
- Dismissal
- Discrimination

### Job Applicants

Job applicants for positions in the classified service may file an appeal to Human Resource Management Services for discrimination in employment.

State rules prohibit discrimination based on:

- Sex
- Race
- Color
- Religion
- National origin
- Age
- Mental or physical disability
- Political opinions or affiliations
- Marital status
- Status of receiving public assistance
- Lawful activity, off the employer's premises, during non-working hours

## APPEAL PROCEDURES

**Waiver.** A classified employee who has been given notice and an opportunity to respond may request a waiver of the requirement to complete the agency grievance procedure. The employee and the employer must both sign a written agreement to waive the agency grievance procedures within fifteen working days from the date of the employer action. Once the employee has the written waiver, the employee must begin the appeal process by notifying ND Human Resource Management Services no later than fifteen working days from the date of the waiver.

If the employee's request for a waiver is denied by the appointing authority, the employee must start the internal agency grievance procedure within fifteen working days from the date of the employer action.

## **Appeal Process**

In the absence of a waiver, an employee filing an appeal must begin the appeal process within established time limits. Failure to do so may result in loss of right to appeal to Human Resource Management Services.

**Step 1.** The agency shall prepare the results of the agency grievance procedure, along with a service of notice (Appendix B). This service of notice will show the date that the results were mailed/delivered to the employee.

**Step 2.** Within fifteen working days of the service of notice, the employee must submit SFN 3096 (Appendix A), Appeal to ND Human Resource Management Services, to:

Director, Human Resource Management Services  
600 East Boulevard Avenue, Dept. 113  
Bismarck, ND 58505-0120

**Step 3.** ND Human Resource Management Services then completes SFN 17819, Request for Administrative Law Judge and sends it, along with the documents submitted by the employee, to the director of the Office of Administrative Hearings (OAH). The director of OAH appoints an administrative law judge.

**Step 4.** The administrative law judge may conduct an evidentiary hearing on behalf of Human Resource Management Services.

- The administrative law judge first considers whether the appeal was filed within required time limitations. If the administrative law judge believes the time limitations have not been met, the administrative law judge prepares an appropriate order dismissing the appeal and provides a copy to the parties.
- The administrative law judge also considers whether Human Resource Management Services has jurisdiction in the matter of the appeal. If the administrative law judge determines that Human Resource Management Services does not have jurisdiction over the appeal, findings of fact and conclusions of law (if appropriate), and a final decision dismissing the appeal are provided to the parties.
- If the administrative law judge determines that Human Resource Management Services has jurisdiction, an evidentiary hearing will be conducted. Following the hearing, the administrative law judge issues findings of fact, conclusions of law, and a final order; copies are provided to the parties.

## **ADMINISTRATIVE HEARING**

The purpose of the hearing is to gather the facts and evidence to determine whether the appellant's and employer's rights were observed in the process, to determine the admissibility of the evidence, and to gather the facts necessary to render a decision in the matter being heard.

The administrative hearing is not a court hearing; however, it is a quasi-judicial proceeding. State agencies are represented by an assistant attorney general; county agencies are

represented by an assistant state's attorney. Appellants may represent themselves at the hearing, hire an attorney, or arrange for someone else to represent them.

### **Documentation and Evidence**

The burden of presenting evidence to support a fact or position rests with the party claiming the fact or position. Relevant documentation and other evidence may be presented by both the employer and the appellant. The administrative law judge determines whether the documentation or other evidence is relevant to the matter being heard. All original documents must be provided to the administrative law judge, with a copy for the opposing party.

### **Witnesses and Subpoenas**

Either party may call witnesses to present relevant testimony in support of its case. Witnesses are sworn to ensure the testimony they give is true upon penalty of perjury. Both parties have the right to cross-examine witnesses.

Either party may request a subpoena to call a witness to testify by sending a written request to the administrative law judge. The request must specifically identify the witness and the complete address at which the witness may be served. A request for production of documentary evidence must sufficiently identify or describe the document or other object subpoenaed, identify the person who is to produce the documentary evidence, and the complete address at which that person may be served. An attorney representing a party may issue a subpoena. The party requesting the subpoena is responsible for its timely service, as well as payment of all fees, including witness fees and mileage, associated with its service.

### **Final Argument**

When all evidence has been presented, both parties will have an opportunity to present final argument. Final argument may be in the form of memoranda, briefs, or oral argument, in the discretion of the administrative law judge.

Brief – a written argument focused on legal points and authorities, used to outline the essential facts of the case and the questions of law involved.

Memorandum – a written argument in support of a position, much like a brief but in less formal style.

Oral argument – verbal legal argument, its purpose being to persuade the administrative law judge to decide in the favor of the party giving the argument. Oral argument is usually given at the conclusion of the hearing. Memoranda or briefs are submitted later, at a time specified by the administrative law judge. **Memoranda and briefs may not contain new information which was not presented at the hearing.**

## **POST-HEARING PROCESS**

### **Transcripts**

Either party may request a typed transcript of the hearing. The party who makes the request is required to pay the cost of preparing the transcript. If neither party requests transcript preparation before the administrative law judge's final order, but the matter is later appealed, the party appealing is required to pay the costs of preparing the record, including transcript preparation.

Requests for transcripts must be made to Human Resource Management Services.

### **Appeal File**

The appeal file contains a copy of the findings of fact, conclusions of law, and final order; copies of the memoranda or briefs; the original grievance form; pertinent correspondence; as well as other pertinent documents.

Human Resource Management Services shall maintain the original record of the proceedings.

## **APPEALS TO COURT**

**Appeal to District Court** – An appeal of the administrative law judge's final order must be made to District Court within thirty days after notice of the order was given.

**Appeal to Supreme Court** – An appeal to the Supreme Court must be made within sixty days after the service of the notice of entry of judgment in the District Court.



## APPEAL TO ND HUMAN RESOURCE MANAGEMENT SERVICES

STATE OF NORTH DAKOTA

SFN 3096 (4-2010)

### PART I - INFORMATION

Appeals to ND Human Resource Management Services may be made by non-probationary employees in classified positions who are appealing dismissal, demotion, discrimination, forced relocation, reduction-in-force, reprisal action, and suspension without pay.

### PART II - APPELLANT/AGENCY IDENTIFICATION

Appellant's Name (Last, First, M.I.)			
Employing Agency	Work Unit/Division		
Immediate Supervisor	Title		
Appointing Authority	Title		
Appellant's Mailing Address	City	State	ZIP Code
Appellant's Title	Home Telephone Number	Work Telephone Number	

### PART III - APPEAL IDENTIFICATION

Check the type of appeal:

- Dismissal     
  Discrimination     
  Forced Relocation     
  Demotion  
 Reduction-in-Force     
  Reprisal Action     
  Suspension Without Pay

### PART IV - GRIEVANCE/REMEDY IDENTIFICATION (This part must be completed.)

State the grievance (be specific, using additional sheets if necessary):

State the specific remedy(ies) sought to resolve this grievance:

Outcome of agency grievance procedure:

Date of notification of appointing authority's decision regarding the grievance (if applicable):

**PART V - REQUIREMENT TO COMPLETE AGENCY GRIEVANCE PROCEDURE**

Before an appeal may be submitted to ND Human Resource Management Services, the employee must complete the grievance procedure of the agency involved. However, if the employee has obtained a waiver from the agency's appointing authority, the employee need not complete the agency grievance procedure prior to appealing to ND Human Resource Management Services. A copy of all internal grievance documents, including the final determination, or the waiver must be attached to the appeal form.

**PART VI - TIME LIMITATIONS TO BEGIN THE APPEAL**

An appeal to ND Human Resource Management Services must be submitted within time limits established by N.D. Admin. Code ch. 4-07-20.1. Any extension(s) granted to the established time limits must be attached to the appeal when submitted.

**PART VII - CERTIFICATION**

I certify that I am a non-probationary, classified employee and that this appeal meets the applicable time limitations.

\_\_\_\_\_   
Appellant's Signature

\_\_\_\_\_   
Date

Upon completion of this form, please submit it to the Director, ND Human Resource Management Services, State Capitol - 14th Floor, 600 East Boulevard Avenue Dept. 113, Bismarck, ND 58505-0120.

**AFFIDAVIT OF SERVICE**

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the attached was [placed in the United States mail or personally delivered] at Bismarck, North Dakota.

A true and correct copy thereof was addressed as follows:

\_\_\_\_\_  
[Name of Sender]

Subscribed and sworn to before this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public