



Human Resource  
**POLICY MANUAL**

NORTH  
**Dakota**

Be Legendary.™

The policies in this manual are not firm conditions of employment, and the language is not intended to create an employment contract between the State and its team members. The Office of Management and Budget director reserves the right to alter, amend, modify, rescind, or otherwise change the content of this manual as permitted by law, in its sole discretion, and without advance notice to any team member affected by the provisions of this manual.

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(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. The pdf version of this document can be downloaded for agency personalization.)

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## HR-Related Forms

The following forms are mentioned in the OMB Policy Manual. These forms, and others, can be found on HRMS' website, <http://www.nd.gov/hrms/managers/forms.html>, and/or E-forms, <http://www.nd.gov/eforms/>.

<u>Drug-Free Workplace Acknowledgement</u> , SFN 16769.....	Chapter 3
<u>Employment Reference Check Form</u> , SFN 52826 .....	Chapter 4
<u>Team member Records Access</u> , SFN 17770.....	Chapter 5
<u>Leave Donation Request</u> , SFN 58960.....	Chapter 7
<u>Request for Tuition Reimbursement</u> , SFN 51372 .....	Chapter 10
<u>Team member Grievance</u> , SFN 18409.....	Chapter 14
<u>Appeal to ND Human Resource Management Services</u> , SFN 3096.....	Chapter 14
<u>Team Member Exit Checklist</u> , SFN 19451 .....	Chapter 15
<u>Employment Termination Questionnaire</u> , SFN 58740 .....	Chapter 15
<u>Reduction-In-Force Analysis Worksheet</u> , SFN 17168.....	Chapter 15
<u>Infant at Work Request</u> , SFN 54321.....	Chapter 18
<u>Managers' Infant at Work Review</u> , SFN 54320 .....	Chapter 18
<u>Infant at Work Waiver of Liability, Indemnification, &amp; Medical Release</u> , SFN 59429.....	Chapter 18

Universal policies may be found on the [OMB website](#).

## **CHAPTER 1: INTRODUCTION**

### **SECTION 1. PURPOSE**

The purpose of this manual is to provide direction in those areas of human resource management that are important to the effective and efficient operation of the organization. The policies are designed to provide for fair, equitable, and consistent decisions on those matters relating to OMB team members.

### **SECTION 2. APPLICATION**

The policies in this manual apply to all team members of OMB. Exceptions to these policies may be made only with the written approval of the OMB director. Benefits discussed are available to those team members who meet eligibility requirements.

### **SECTION 3. REVISION AND DISTRIBUTION**

This manual may be revised, as necessary. A copy of this manual and all revisions must be provided to division directors, managers, and team members in hard copy or electronically. Each division director shall ensure that this manual is accessible to all team members.

### **SECTION 4. DEFINITIONS**

Some of the terms used throughout this policy manual are defined as follows:

- "Authorized position" means a position authorized by the Legislature. A position may or may not be funded.
- "Classification/Reclassification" means the placement of a position in a specific job classification at a specific pay grade based on the duties and responsibilities of the position.
- "Compensation" means the combination of salary or wages and benefits provided to a team member.
- "Director" means the director of OMB.
- "Deputy" means the deputy director of OMB. The deputy acts on behalf of the director as authorized by the director.
- "Discipline" means any action taken by the director, a division director, a manager, or a manager that is designed to correct the job performance or work-related behavior of a team member.
- "Division director" means the director of a specifically identified division within OMB.
- "Emergency status" means an individual subject to the merit system who is employed as a result of unusual or unexpected conditions or when employment is anticipated to be of very short duration, without regard to the normal open, competitive selection (certification) process and the duration of the employment does not exceed ninety (90) working days.
- "Team member" means an individual who receives compensation for employment with OMB.
- "Exempt team member" means a team member who is not subject to the overtime requirements of the Fair Labor Standards Act.
- "Manager" means a team member who is responsible for assigning work to others, determining the standards of performance, and providing formal evaluations of others' work performance. The term "manager" may be used interchangeably with the term "manager."



- "Merit system exempt status" means an individual employed subject to the merit system in a non-classified position without regard to the normal open, competitive selection process such as seasonal or time-limited programs and for appointed officials.
- "Non-exempt team member" means a team member who occupies a position that is subject to the minimum wage and overtime requirements of the Fair Labor Standards Act.
- "Regular team member" means an individual employed in a legislatively authorized position; if classified, was selected for a position on an open, competitive basis and successfully completed a six-month or longer probationary period, if unclassified was authorized by statute.
- "Probationary team member" means an individual employed in a classified position who was selected for a position on an open, competitive basis and who has not yet completed the initial probationary period.
- "Promotion" means the reassignment of a team member from the team member's present position to another existing position that is at a higher pay grade.
- "Reduction-in-force" means the loss of employment by a team member as a result of a reduction in funding, lack of work, curtailment of work, or reorganization. ([NDAC 4-07-11-02](#))
- "Salary" means a fixed portion of a team member's compensation that is paid on a regularly scheduled basis.
- "Manager" means a team member who is responsible for assigning work to others, determining the standards of performance, and providing formal evaluations of others' work performance. The term "manager" may be used interchangeably with the term "manager."
- "Temporary team member" means an individual employed in a position that is time-limited in duration. Those divisions of OMB subject to the merit system must also select temporary staff on an open, competitive basis. ([NDAC 4-07-28-02](#))
- "Transfer" means a personnel action that results in the reassignment of a team member from one position to a different position that has the same pay grade as the team member's previous position and that does not result in a break in service. ([NDAC 4-07-05-01.1](#))

Updated: 11/2018

## CHAPTER 2: RESPONSIBILITIES

### SECTION 1. TEAM MEMBER RESPONSIBILITIES

All team members of OMB are required to comply with all policies contained in this manual.

#### **Confidentiality**

Team members must respect the confidentiality and sensitive nature of information with which they may come into contact. It is imperative that team members do not reveal or divulge any confidential information or documents. Team members may be required to sign a confidentiality statement and have a criminal background check completed.

#### **Customer service**

OMB is committed to providing our customers the best products and the best service possible. Team members are expected to practice good customer service in carrying out their duties.

#### **Dress/image**

Team members are expected to dress appropriately and professionally for the work performed. Clothing and accessories, including jewelry, which contain an offensive message or connotation, are prohibited. Clothing to avoid includes offensive logo t-shirts and sweatshirts, sweat suits, casual shorts, and spandex pants.

Dress or work shorts may be permitted in designated areas, such as the surplus property warehouse. Sandals, open-toed, and open-back shoes can be worn in office settings but are prohibited in shop and warehouse areas. Jeans are not permitted for office staff except on designated occasions.

#### **ID Cards**

Team members will be issued a picture identification card identifying the individual as a team member of the State of North Dakota and the specific division of OMB. It is not intended for use as a general identification. A request to have an ID card must be approved by the manager and submitted to Highway Patrol. Information regarding how to request a key card can be found [here](#). The card must be returned upon termination of employment with the division.

#### **Keys**

Only team members who are scheduled to come to work prior to the building opening or who are in a manager position will be issued a key to division offices. Team members will be required to sign for the key. It is a team member's responsibility to immediately report to the manager a lost or stolen key, and the team member will be charged a fee to replace a lost or stolen key. Designated OMB staff will immediately or as soon as practical notify NDHP security of any lost or stolen keys or key cards. Team members must return their keys and key cards to the manager upon termination of employment. Designated OMB staff will notify NDHP security within 10 days of a team member's termination of employment by using the NDHP Fingerprinting/ID Card Request Form.

Century Center - All team members are issued card keys that control access to the building. The card keys operate by passing them near (within 6") of the card readers. Several levels of security allow team members access to the building based on time of the day, day of the week, etc. Card keys are only to be used by the person to whom they are assigned. Allowing an unauthorized person access to Century Center without an escort is a security violation. It is the responsibility of each OMB team member to immediately report to

WSI Human Resources all card keys that are lost, stolen, or not working properly. OMB team members with card key access to the Century Center Complex, who terminate employment or no longer require access to the building, must return the card key to WSI Human Resources prior to departure from the building. All card keys remain the property of WSI and must be relinquished to the WSI manager at any time upon request.

### **Bulletin Boards**

OMB uses bulletin boards to communicate important business information such as safety rules, job postings, health and wellness information, statutory and legal notices, agency policies, and specific Management memos. Team members may not post material on bulletin boards without the approval of the division director or designee.

### **Report of Fraudulent/Significant Dishonest Acts**

Fraud is defined as intentional workplace deception, lying, cheating, and stealing or the use of one's position within OMB for personal enrichment through the deliberate misuse or misapplication of OMB's resources or assets.

A team member with a reasonable basis for believing that fraudulent or other significant dishonest acts have occurred in the workplace has a responsibility to report the suspected act in a timely manner. Reports should be made to the team member's immediate manager or manager, unless the team member suspects that the manager or manager has participated in or condoned the act. In that case, the team member should report the matter to the next highest level of supervision or management or directly to the OMB Director.

This policy shall not prohibit prompt notification to appropriate authorities when an immediate threat to personal safety exists or other circumstances justify such notice. Upon discovering evidence of possible fraudulent or other significant dishonest acts, team members should not confront individuals suspected of wrongdoing or initiate fraud investigations on their own because such actions may compromise any ensuing investigation.

Team members shall not make statements or disclosures knowing they are false or in reckless disregard of the truth. Such false reports may be cause for disciplinary action up to and including termination of employment.

### **State Provided Logoed Apparel Policy**

Team members of the state of North Dakota as designated by their agency head or designee, may be provided logoed apparel to represent Team ND or the agency. State or agency-logoed apparel provided by the agency may not be worn for personal use. Team members are not to add the state or agency logo to personal apparel without permission from their agency head or designee. It is the responsibility of the team member to use their best discretion to avoid wearing the apparel in inappropriate circumstances.

The agency head or designee will determine team members, apparel design, apparel components, usage guidelines, and apparel purchasing. Agency-provided apparel may be worn only by authorized team members.

Upon issue, agency-provided apparel becomes the responsibility of the team member for maintenance and care. When apparel needs repair or replacement, team members are required to return the apparel in exchange for a replacement.

Agencies may issue new apparel periodically or require apparel to be returned for special purposes (e.g., logo change, color change). Team members will be given notice of the exchange and will be provided with suitable replacement apparel.

The misuse of agency-provided logoed apparel, excessive damage or loss may result in disciplinary action.

The provided logoed apparel is considered state property and is to be returned in the event of termination of employment, or upon request of the agency.

Agency participation in providing state logoed apparel is determined by the Agency Head.

Updated: 8/1/2023

## SECTION 2. ETHICS POLICY

The highest standard of ethical conduct and fair dealing is expected of each team member and all others associated with OMB and the divisions within OMB. Our reputation is a valuable asset, and we must continually earn the trust, confidence, and respect of our fellow team members, our vendors, and our community. This policy provides general guidance on the ethical principles that team members must follow, as no policy can anticipate all situations. OMB depends on the basic honesty and good judgment of its team members, and their sensitivity to the way others see us and may interpret our actions. If team members have any questions about this policy, it is their responsibility to consult their manager or the division director. Exceptions to this policy may be authorized only by the OMB director. All team members are expected to promptly disclose anything to their manager or division director that violates this policy.

Retaliation against anyone who reports possible violations of this policy will not be tolerated.

### **Additional Employment**

The State of North Dakota, as the employer, has established an additional employment policy that applies to all team members regardless of status. Team members may seek a second job or additional employment opportunity or may consider starting a business provided it will not create a conflict of interest between the team member and the employing agency.

Team members must inform their manager and Human Resources, in writing or via email, of the additional employment or personal business prior to any work being done for the other employer. Notification to the employing agency must include the name and location of the additional employer, position, or type of work, and expected work schedule.

If the employing agency determines the additional employment is prohibited by statute, a violation of the state, a conflict of interest, or negatively impacts the agency's image, the team member will be required to resign from one of the positions.

Team members who have accepted additional employment may not use paid sick leave provided by the state to work for another employer or personal business.

For purposes of the federal Fair Labor Standards Act, all entities of North Dakota state government are considered to be one employer. If a team member works for two different employing agencies of the State, both employing agencies must ensure continued compliance with FLSA requirements.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

Reference: [Fair Labor Standards Act](#).

Universal Policy Updated: 10/2022

### **Compliance with Laws and Regulations**

Team members shall conduct all work-related activities in compliance with all laws, regulations, policies, and procedures. OMB team members are charged with understanding the applicable laws, recognizing potential dangers, and knowing when to seek management or legal advice.

### **Conflict of Interest**

The State of North Dakota, as the employer, must avoid any interest, influence or relationship that might conflict or appears to conflict with the interests of the State, or that might affect one's working judgement. Team members must avoid any situation in which their loyalty may be divided and promptly disclose any situation to their manager when an actual or potential conflict may exist. This policy applies to all team members regardless of status.

Conflict of Interest: Conflict between the duties assigned to the team member and the self-interest of the team member or the team member's immediate family. Examples of potential conflict situations include, but are not limited to:

- a. Ownership, a significant financial interest in, or other relationship with a supplier or vendor to the State.
- b. Having a financial interest in any business transaction with the State.
- c. Receipt of gifts of more than a nominal value.

Gifts: Tokens, meals and refreshments, entertainment, or other benefit of more than a nominal value exceeding \$50.

Immediate family: Any member of the team member's immediate family, including a parent, spouse, child, sibling, grandparent, step- (parent, child, siblings), or in-laws (parent, child, and sibling).

Conflicts of interest will be avoided through open disclosure practices and corrective actions. A team member with a conflict must disclose the conflicting interest and remove themselves from any related negotiations, deliberations, or decisions; however, team members may state their position and respond to questions when their knowledge may be of assistance.

A team member may not accept or give anything of value for official position, opinion, or action or nonperformance of a legal duty or for purposes of attempting to influence any other public official or team member in the exercise of an official action. A "thing of value" does not mean a campaign contribution properly received and reported in accordance with [NDCC 16.1-08.1](#).

Team members may accept meals and refreshments if they are infrequent, of nominal value, and in direct connection with State business.

If a team member receives a gift or a benefit of more than nominal value, the team member must report it promptly to their supervisor. The received item(s) must be then returned, shared or donated to a suitable charity.

Gifts may not be accepted if offered with the intent to directly or indirectly influence or give the impression of such influence.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

Elected or appointed officials of the state's executive or legislative branch are subject to the [Ethics Commission rules and laws](#).

References: [NDAC 4-12-04-04](#), [NDCC 16.1-08.1](#), [54-44.4](#), [Governor's Ethics Policy](#)

Universal Policy Updated: 2/2024

### **Political Activity**

OMB recognizes that team members, in their individual capacity, may participate in the political process by supporting political parties, candidates, or causes. However, OMB is prohibited from directly or indirectly participating in any political campaign of, support for, or opposition to any candidate. OMB may not contribute anything of value, including a team member's time, to political campaigns, publish or distribute materials on behalf of any candidate or party, or engage in any other activity which may be considered in support of or in opposition to any candidate. Any efforts devoted to political activity must be outside the team member's working hours or a team member must be on annual leave.

Team members may personally contribute to a candidate or party of their choice. However, team members may not be compensated or reimbursed by OMB or the State of North Dakota for their personal contribution.

Unless specifically authorized by the OMB director, any statements made by a team member on public issues are not to be construed as those of OMB or the State of North Dakota. (Hatch Act, 5 U.S.C. § 1501-1508.)

### **Discrimination, Harassment, and Personal Conduct**

OMB strives to provide a healthy, safe, and positive working environment for all team members, clients, and customers.

All OMB team members are expected to maintain high standards of honesty and integrity, and treat all fellow team members, clients, and customers with courtesy and respect.

All OMB team members are expected to carry out all duties that they are directed by their manager or other team member that has direct or successive authority over them, unless the directive is illegal, immoral, or otherwise in contradiction to ethical behavior. Any team member given a directive that contradicts this ethics policy has a right to refuse the directive and should report it to another manager, their division director, or director of OMB.

### **Team Member Privacy and Other Confidential Information**

Team member privacy is covered under OMB's Payroll and Miscellaneous Fiscal Policies, Policy 103 Release of Public Records, and [NDCC 44-04-18.1](#).

### **Use and Protection of OMB and State Assets**

Team members have a duty to preserve the assets of OMB and the State of North Dakota. Team members must demonstrate cost control and follow procurement standards. Acquisitions of goods and services must be at the proper level of utility and quality for the purpose intended to promote overall economy for the purpose intended.

Team members may not use state-owned materials, equipment, property, or other assets for any unauthorized purpose. Certain assets must be periodically tracked and inventoried. Specific guidelines for inventory procedures are covered under OMB's Fiscal and Administrative Policy, Appendix A, Fixed Asset Policies, and [NDCC 44-04-07](#).

Team members who willfully damage, misuse, steal, or destroy State property or assets may be disciplined up to and including termination of employment.

### **Financial, Personnel, and Other Records**

Team members must record and report information accurately. Reimbursable business expenses must be reasonable, accurately reported, and supported by receipts where necessary.

Financial statements of OMB and all books and records on which they are based must accurately reflect all transactions. All disbursements and receipts of funds must be properly authorized and recorded. No undisclosed or unreported State fund may be established for any purpose.

Those responsible for the handling or disbursal of funds must assure all transactions are executed as authorized and recorded in accordance with the policies and procedures of OMB and the State of North Dakota.

Coffee funds or other similar funds not related to State funds are allowed and are the property of the team members who participate.

### **Policy Compliance**

Failure to comply with this policy may result in disciplinary action up to and including reimbursement to OMB and/or the State of North Dakota for any losses or damages, termination of employment, and/or referral for criminal prosecution. Action will also be taken against those who fail to report a violation or withhold relevant information concerning a violation of this ethics policy.

## **SECTION 3. EMPLOYMENT OF RELATIVES/NEPOTISM**

The State of North Dakota, as the employer, has established an Employment of Relatives / Nepotism policy, which is modeled from current state law. This policy applies to all team members regardless of status.

A state official or state team member, in the exercise of that official's or team member's duties, may not serve in a supervisory capacity over, or enter a personal service contract with, that official's or team member's parent by birth or adoption, spouse, son or daughter by birth or adoption, stepchild, brother or sister by whole or half blood or by adoption, brother-in-law or sister-in-law, or son-in-law or daughter-in-law.

"Supervisory capacity" means the authority to appoint, employ, hire, assign, transfer, promote, evaluate, reward, discipline, demote, or terminate another team member.

"Evaluate" does not include evaluations by peers or subordinates.

This policy does not apply to an employment relationship or contract entered before August 1, 1999; nor to any employment relationship or contract entered before the state official or team member assumed the supervisory capacity; nor to any temporary work arrangement necessary to meet a critical and urgent agency need.

Any funds paid out in violation of this policy must be deducted from the salary of the hiring or contracting state official or state team member.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

References: [NDCC 44-04-09](#) to [44-04-10](#)

Universal Policy Updated: 6/2023



## CHAPTER 3: EMPLOYMENT PRACTICES

### SECTION 1. EQUAL EMPLOYMENT OPPORTUNITIES

The State of North Dakota, as the employer, requires all applicants for employment and team members of the state be subject to uniform human resource policies and not be subjected to discrimination, intimidation, coercion, or retaliation in any terms and conditions of employment on the basis of an individual's race, color, religion, sex, national origin, age, genetics, sexual orientation, physical or mental disability, status with regard to marriage or public assistance, political opinions or affiliations, or participation in lawful activity off the employer's premises during non-working hours that is not in direct conflict with the essential business-related interests of the state.

The state makes its employment process accessible to persons with disabilities. Persons needing accommodation should contact the agency representative identified in the job announcement or HRMS at 701-328-3290 voice or through ND Relay Services toll free 1-800-366-6888. Team members in need of an accommodation should direct their request to their manager or agency leadership.

Violations of this policy will not be tolerated and are grounds for disciplinary action, up to and including termination of employment.

For further information on the applicable laws and corresponding guidelines, team members are encouraged to review the related laws and administrative rules.

References: [Equal Pay Act](#), [ADEA](#), [Rehabilitation Act](#), [Civil Rights Act](#), [ADAAA](#), [GINA](#); [NDCC 34- 11.1, 14-02.4, 34-06.1, 34-01-17, NDAC 4-07-14-02, 03, 04](#)

Universal Policy Updated: 6/2023

### SECTION 2. WORKPLACE ANTI-HARASSMENT

The State of North Dakota, as the employer, will not tolerate, condone, or allow any type of harassment to occur within state workplaces or in any other work-related settings. This prohibition applies to every person at a state workplace or present during state-related business activities, including but not limited to state team members, customers, vendors, contractors, or any other person. All team members are empowered with the responsibility to prevent harassment in all state work areas and during all state-related business activities.

Harassment: Any offensive conduct that interferes with an individual's work performance or creates an intimidating or hostile work environment. Unlawful harassment can be verbal, non-verbal, or physical conduct or communication that shows hostility or aversion towards an individual because of a person's race, color, religion, sex, age, genetics, national origin, disability or other legally protected status. Examples may include epithets, slurs, jokes, negative stereotyping, written or graphic materials, posters, calendars, or pictures.

Sexual Harassment: Unwelcome sexual advances, sexual favor requests, or any other conduct or communication of a sexual nature. Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. Examples of sexual harassment include:

- Unwanted sexual advances or requests for sexual favors.

- Sexual jokes and innuendos or verbal abuse of a sexual nature.
- Leering, massaging, or touching or sexual related comments about another's body.
- Displaying inappropriate sexually suggestive or offensive pictures or objects anywhere in the workplace.

Harassment, of any kind, becomes unlawful when:

- 1) Enduring or submission to the offensive conduct explicitly or implicitly becomes a term or condition of continued employment, career advancement;
- 2) Submission to or rejection of such conduct is used as the basis for employment decisions;
- 3) Conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; or
- 4) The conduct is so severe or pervasive to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Reporting:

Early reporting and intervention are critical and have proven to be the most effective method of resolving actual or perceived incidents of harassment. If a team member observes or experiences harassing conduct in the workplace, the team member should either directly inform the offender that the conduct is offensive and must stop or notify agency leadership about the occurrence. If a team member does not feel comfortable reporting the situation within the employing agency, the team member should contact HRMS to report the situation.

All team members shall report harassing behavior they observe or is reported to them.

Managers are responsible to make every effort to provide a harassment-free work environment in their respective work areas. Managers must take immediate action to address and then report any harassing conduct they observe, experience, or that is reported to them, to a member of the employing agency's senior leadership. If the alleged wrong doer is the manager or a member of senior leadership, the team member should work directly with agency HR or OMB HRMS. Incidents must also be reported to the Risk Management Division of OMB by the manager or HR.

Agency leadership will work with HR / legal counsel to investigate and resolve all reports of workplace harassment appropriately in a timely, thorough, and discreet manner. Failure to report incidents of hostile or inappropriate behavior will subject the team member to disciplinary action up to and including termination of employment.

The Employee Assistance Program is available for regular team members who are victims of harassment, sexual harassment, stalking, domestic violence, or dating violence.

Any person who violates this policy will be subject to disciplinary action, up to and including termination of employment, or be removed from the state work area.

### **SECTION 3. AMERICANS WITH DISABILITIES ACT (ADA AND ADAAA)**

The State of North Dakota, as the employer, is committed to providing and promoting equal opportunities in all of its activities and services, including providing reasonable accommodations to the known physical and mental limitations of a qualified applicant or team member with a disability in all aspects of the employment process. Retaliation against individuals who request an accommodation or otherwise exercise their rights under the ADA is strictly forbidden. This policy applies to all applicants and team members unless it creates an undue hardship.

Reasonable accommodation is a reasonable adjustment to the work environment, or in the way things are customarily done, that enables an individual with a disability to enjoy equal employment opportunities. Accommodations are to be made in the hiring process (application, tests, and interview), performance of essential functions of the job, and equal opportunities in benefits and promotions.

Undue hardship is an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

To qualify for protection under the ADA, an individual must:

- Have a physical or mental impairment that substantially limits one or more major life activities;
- Have a history or record of such impairment; or
- Be regarded as having an impairment that is not transitory and minor.

Qualified team members or applicants with disabilities may request accommodations in order to perform the essential functions of a position. Such requests should be made to Human Resources or agency leadership.

Pregnant team members or applicants may have additional protections under the Pregnant Worker Fairness Act. Reasonable accommodations must be provided, for known limitation(s) related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions unless it creates an undue hardship.

If there are no reasonable accommodations available and the individual is unable to perform the essential functions of the position, the individual may no longer qualify for the position.

A team member or applicant who feels discriminated against because of a disability may contact Human Resources to express their concern. Team members may also file a grievance with the agency and, if dissatisfied, may file an appeal with HRMS.

Team members shall not retaliate against, coerce, intimidate, threaten, harass, or interfere with any individual exercising or enjoying his or her rights under the ADA or because an individual aided or encouraged any other individual in the exercise of rights granted or protected by the ADA.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

References: [Americans with Disabilities Act of 1990 \(ADA\)](#) and [ADA Amendments Act of 2008](#)

Universal Policy Updated: 12/2023

## **SECTION 4. WORKPLACE VIOLENCE**

The State of North Dakota, as the employer, maintains a working environment free from violence or the threat of violence. Acts or threats of physical violence, including but not limited to intimidation, harassment, or coercion will not be tolerated.

Team members must immediately report any incidents of violence, threat of violence, or any behavior that may threaten a team member's safety or the safety of others, to appropriate management or law enforcement authorities. Once a managerial level team member is notified of a violent or threatening situation, he/she must contact Human Resources. HR will assist in coordinating the proper response and notifying the appropriate personnel/authorities.

The State of ND prohibits any form of discipline or retaliation for reporting such incidents and shall handle all complaints promptly. Any team member who engages in such conduct or who makes false accusations of violence or threats of violence will be subject to disciplinary action up to and including termination.

In appropriate cases, the organization may seek criminal prosecution or cooperate with the appropriate authorities.

Team members must report to their supervisor the existence of anything that may potentially threaten the safety of the team member or other state team members. This includes a restraining order of any kind obtained by the team member against another individual(s) or a restraining order obtained against a team member. Team members are also encouraged to report if they are a victim of domestic violence or if they suspect a coworker may be a victim.

Any person who violates this policy will be subject to disciplinary action, up to and including termination of employment, or be removed from the state work area.

Universal Policy Updated 6/2023

## **SECTION 5. FAIR LABOR STANDARDS ACT**

The State of North Dakota, as the employer, is required to abide by the federal Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting team members in the private sector and in federal, state, and local governments. This policy is not an exhaustive description of state and federal law relating to the FLSA. Team members should consult with their employing agency's HR or Human Resource Management Services when situations arise to ensure compliance with applicable laws.

For purposes of the FLSA, all entities of North Dakota state government are considered one employer. If a team member works for two different employing agencies of the State, both employing agencies must ensure continued compliance with FLSA requirements.

Pursuant to the FLSA requirements, each position is identified as exempt or nonexempt, based upon the duties of the position. Each agency will determine the appropriate exemption status for each position.

**Nonexempt Team Members:** Nonexempt team members are subject to the provisions of the FLSA and must be compensated for all hours worked. Overtime is compensated at time and a half for all hours worked over 40 in a week and can be either monetary compensation or compensatory time. Paid time off such as annual leave, sick leave, holidays and other paid leave time are not considered work time for purposes of determining overtime. Team members cannot waive their right to overtime compensation. Nonexempt team members are required to accurately record all hours worked.

**Exempt Team Members:** Exempt team members are exempt from the overtime requirements of the FLSA and are not required to be compensated for overtime. Exempt team members are paid an established monthly salary and are expected to fulfill the duties of their position regardless of hours worked.

**Nursing Mothers:** The FLSA requires employers to provide reasonable break time for a team member to express breast milk for her nursing child for one year after the child's birth each time such team member has the need to express milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by a team member to express breast milk.

Management acting directly or indirectly in the interest of an employer in relation to a team member may be held personally liable for wage and hour violations under the FLSA.

Violations of this policy will not be tolerated and are grounds for disciplinary action, up to and including termination of employment.

For further information on the applicable laws and corresponding guidelines, team members are encouraged to review the related laws and administrative rules.

References: [Fair Labor Standards Act](#), [NDCC 34-01](#), [NDAC 46-02-07](#), [46-03-01](#)

Universal Policy Updated: 6/2023

## **SECTION 6. DRUG AND ALCOHOL-FREE WORKPLACE**

The State of North Dakota, as the employer, desires to provide a drug-free, healthful, and safe workplace. Team members are required to report to work in a condition to perform their jobs in a safe, efficient, and satisfactory manner. This policy applies to all team members regardless of status.

Any unauthorized or unlawful manufacture, distribution, dispensations, possession, or use of controlled substances or alcohol by any team member at any workplace or in any vehicle used for official state purposes is strictly prohibited. This prohibition applies during all work breaks, during nonworking hours when the effect inhibits the team member's job performance or agency's performance, or while conducting any official business of the state. The use of prescribed drugs is permitted provided it does not impair the team member's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals, equipment or property in the workplace. No team member may report for work having the odor of an alcoholic beverage on their person or under the influence of alcohol or drugs.

All employees must sign a drug and alcohol-free workplace acknowledgement form ([SFN 16769](#)) at the time of hire.

A manager may require a team member to leave the workplace if the manager determines the team member has reported to work in an inappropriate condition and cannot perform the essential functions of the job effectively in a safe manner that does not endanger themselves or others. The team member may be required to use annual leave or sick leave. If the manager determines the team member should not operate a motor vehicle, the manager should arrange transportation for the team member. If the team member refuses to accept transportation and insists on operating a motor vehicle, they will be informed by the manager that law enforcement officials will be notified that the team member appears unfit to operate a motor vehicle. Law enforcement officials should then be appropriately notified.

Under the Drug-Free Workplace Act, a state team member who performs work for a government contract or grant must notify the state of a criminal conviction for drug-related activity occurring in the workplace. The report must be made within five days of the conviction.

When participating in social activities sponsored by the state, a state agency, or which are associated with workplace activities, team members are required to conduct themselves in a manner that they do not represent a danger to themselves, other team members, or the general public, or damage the reputation of the state.

To inform team members about important provisions of this policy, the state has established a drug-free awareness program. The program provides information on the dangers and effects of substance abuse in the workplace, resources available to team members, and consequences for violations of this policy. Team members with questions or concerns about substance dependency or abuse are encouraged to use the resources of the Employee Assistance Program. Team members may also wish to discuss these matters or this policy with their supervisor, their Human Resource department or HRMS to receive assistance or referrals to appropriate resources in the community.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment and participation in a substance abuse rehabilitation or treatment program.

References: [Public Law 100-690](#)

Universal Policy Updated: 10/2018

## **SECTION 7. SMOKING AND TOBACCO USE**

The State of North Dakota, as the employer, prohibits smoking and the use of tobacco by its team members within state agency workplaces and in any other work-related settings, including inside any State Fleet vehicle. When on state owned or leased property, team members may use tobacco in designated areas only.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device.

Tobacco: Any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, among other products, cigarettes, cigarette tobacco, roll-your-own tobacco, electronic cigarettes, vaporizers, and smokeless tobacco.

Reference: [NDCC 23-12-09](#)

Universal Policy Updated: 6/2023

## **SECTION 8. POLICY REVIEW**

All team members at the time of hire and annually thereafter must acknowledge that they have reviewed and understand OMB policies on discrimination, including sexual and other forms of unlawful harassment, requests for reasonable accommodations, and workplace threats of violence.

Updated: 10/2018

## CHAPTER 4: RECRUITMENT, SELECTION, REFERENCE, AND BACKGROUND CHECKS

### SECTION 1. RECRUITMENT & SELECTION

It is the goal of the Office of Management and Budget (OMB) to obtain the best qualified person to fill a vacancy.

The division director shall determine whether a position vacancy is posted internally within a work unit, the division, OMB, or externally. There is no requirement to announce a vacancy when transferring a team member to a vacant position as a reasonable accommodation under the Americans with Disabilities Act or to avoid a reduction in force during a reorganization.

Internal vacancies must be posted for a minimum of three working days.

Recruiting efforts outside the agency must be planned and carried out in a manner that ensures open competition. Each external vacancy announcement must be made known to the public by notice to Human Resource Management Services (HRMS), by either a completed vacancy announcement or a memo, and any other appropriate cost-effective methods.

Team members who desire a promotion or transfer must prepare themselves to become qualified to assume more or different responsibilities.

Temporary team members may be considered for internal recruitment if they were initially hired through an open and competitive recruitment and hiring process. Interns may be considered for internal recruitment if they completed a documented internship with OMB within two years immediately prior to employment.

All applicants must be considered on the basis of their job-related merits as relates to the position. The selection process shall include determination prior to the closing date of the number of applicants to interview, screening and ranking of applications, interviews, and reference checks. For positions filled through internal recruitment, consideration shall also be given to past performance evaluations. The division director shall ensure that an applicant selected to fill a vacancy meets the requirements as stated on the vacancy announcement and the class description.

Persons eligible to receive veteran's preference are entitled to preference in employment, in accordance with [NDCC 37-19.1](#), through external recruitment and selection. Veterans' preference does not apply to internal recruitment and selection.

Veterans who are not selected for a position must be notified by certified mail that employment was refused. The letter must include the reason(s) for non-selection and provide information on how to appeal.

### SECTION 2. REFERENCE AND BACKGROUND CHECKS

The hiring authority shall conduct reference checks of the final applicant(s) considered for selection to fill a vacancy. Reference checks must consist of contacting current and previous employers and/or managers. If an applicant indicates that a current manager or employer may not be contacted, efforts shall be made to gather reference information from other sources. Reference checks may include former co-workers or



subordinates, customers, clients, or anyone else who has conducted business with the applicant. However, personal references should only be used when work references are not available.

Observe the following guidelines when conducting reference checks:

- All questions of references must be related to the job for which the applicant is being considered. Ensure that questions are within the scope of those on [SFN 52826](#) (Employment Reference Check Form). HRMS can assist managers in developing additional reference questions.
- Reference checks can be performed through personal contact, regular mail, e-mail, or by telephone. When the reference's responses are given orally, document those responses on the Employment Reference Check Form. Also, document when information cannot be obtained from those sources.
- Maintain all documentation as well as written references in the recruitment file.
- Use form SFN 51915 (Information Release Authorization for Employment Consideration) for authorization to conduct reference checks if the reference requires a written release.

A criminal background records check may be required for certain positions. Use form SFN 51915 for this purpose.

A hiring authority, when considering applicants for selection who are or have been employed by a state, county, city, or public school, should review the personnel file of the applicant(s).

Division directors or their designees are authorized to release official personnel information. Any team member who receives a request for work history or other personnel information regarding current or former team members, whether written or verbal, should refer the request to one of the above cited individuals. This information must be limited to dates of employment, pay level, job description and duties, wage history, and job performance and must be truthful and provided in good faith ([NDCC 34-02-18](#)).

All information given or received from reference and background checks must be evaluated in compliance with the Fair Credit Reporting Act (FCRA), the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act, and any other applicable state and federal law.

If any applicant is found to have intentionally falsified any information regarding reference or background history, the applicant will not be considered for employment.

### **SECTION 3. CRIMINAL HISTORY RECORD INFORMATION**

**NOTE: This policy is only applicable to non-law enforcement agencies**

The State of North Dakota, as the employer, may conduct criminal history record checks on potential or current employees, and reserves the right to conduct additional record checks as a condition of continued employment if deemed necessary. This policy is applicable to Criminal History Record Information (CHRI) and fingerprint-based requests through the North Dakota Bureau of Criminal Investigation (NDBCI). A state agency may only conduct criminal history records checks if express authority has been provided by state or federal law.

The state agency must have a user agreement in place with NDBCI to request any CHRI.

The agency must identify specific positions that will have access to the CHRI. The name of those team members residing in those positions must be reported to NDBCI. If there are any updates to personnel NDBCI needs to be made aware of those changes. Authorized personnel will be given access to view and

handle the records after completing the FBI required training. Team members must sign a Statement of Misuse prior to handling, encountering, or discussing any information presented in the CHRI.

Falsification, including misrepresentation or failure to disclose relevant information as part of the recruitment and application process, may disqualify a candidate from employment consideration.

The individual may be asked to provide additional information related to information presented on their CHRI. If an individual believes his/her criminal history record is inaccurate or incomplete, he/she must notify the state agency within five working days of his/her intent to challenge the report.

The individual has the right to request a copy of his/her CHRI. Only the individual may receive a copy of their CHRI and must pick up the copy at the state agency location.

If at any time during employment, a team member is charged with or convicted of a crime he/she must disclose the necessary information to their immediate manager or agency human resources. Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

References: [NDCC 12-60-24](#), [12-60-16.5](#), [12-63-06](#), [12-63-09](#), [54-46](#), and [Public Law \(Pub. L.\) 92-544](#).

Universal Policy Updated: 9/2020

## SECTION 4. APPLICANT OPEN RECORDS

This policy applies to all public entities regarding Open Records related to employment applications. An Open Record is a record of activities within a public entity that North Dakota Century Code has dictated must be available as a public record. This policy applies only to applications for employment.

For public entities receiving applications for posted job openings the following standards apply:

- Three or more qualified applicants – Only Finalist Records are Open. The agency shall designate three or more of the qualified applicants as finalists for further consideration. Once applicants are designated as finalists, the applications and related records only of the finalists are open records.

However, if the agency does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the agency need not designate any finalists and records related to the applications are exempt.

- Two or fewer qualified applicants – All Applicant Records are Open Records. If, by the close of the application period for a vacant position, an agency receives fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open records.

[NDCC 44-04-18.27](#)

Universal Policy Updated: 8/2021

## CHAPTER 5: TEAM MEMBER WORK HOURS, PAYROLL REPORTING, PERSONNEL RECORDS, RECORDS MANAGEMENT, AND LITIGATION HOLD ORDER

### SECTION 1. HOURS OF WORK

The division director will determine when the work week begins and ends. Unless otherwise specified, the standard work week in OMB begins on Sunday at 12:01 AM and ends at midnight Saturday. There may be certain advantages in setting a different work week, such as one that starts at 5:00 p.m. on Friday. It is also permissible to have more than one work week designation for different categories of team members. Therefore, within OMB certain team members may be assigned a different standard work week by their division director.

The standard work week for full-time team members is 40 hours, consisting of five consecutive eight-hour days, normally Monday through Friday.

The standard workday is from 8 a.m. to 5 p.m. Certain team members may be assigned different work hours by their division director.

OMB allows flexible scheduling so that team members may vary their particular work hours from the normal office hours with managery approval. Flexible schedules are subject to the approval of the division director. Occasionally, team members may be asked to work outside of their normal work schedule.

#### **Work Breaks**

Team members are encouraged to take a short break from time to time to relax and refresh themselves. OMB allows up to two paid 15-minute breaks, one in the first half of the work schedule and one in the last half. Smoke breaks should be included in the allotted time for work breaks. Flexibility regarding breaks must be discussed in advance with the manager.

#### **Lunch Breaks**

Team members must be required to take an unpaid lunch break of at least 30 minutes during the work schedule if team members work more than 5 consecutive hours. Team members must be completely relieved of all duties and free to leave their duty post. There is no requirement that the team member be allowed to leave the premises or work site.

#### **Nursing Mother Breaks**

The State of North Dakota, as the employer, in accordance with the Providing Urgent Maternal Protections Act (PUMP Act), Patient Protection and Affordable Care Act amendment of the Fair Labor Standards Act, gives team members reasonable break time to express breast milk for a nursing child. The team member is eligible for this break time up to one year after the child's birth each time such team member has the need to express milk.

Team members are provided a flexible schedule for breast feeding or pumping breast milk for their child. The time should not exceed normal time allowed for lunch and breaks. If additional time is necessary, annual leave may be used or the team member may use a flexible schedule to come in early or stay late to make up the time. Flexible schedules require manager approval prior to implementation.

Team members must be provided a private place, other than a bathroom, that is shielded from view and free

from intrusion from coworkers and the public, to use for expressing breast milk.

Team members who do not have a private office should contact their agency Human Resources to request access to a designated area.

References: ([NDCC 23-12-16](#), [23-12-17](#)); [NDAC 45-02-07-02](#)

Updated: 6/2023

## **Travel Time**

In work-related situations, the time a non-exempt team member operates a motor vehicle is considered work time and is considered in determining the number of hours worked during the week. If the combination of hours worked and driving time exceed 40 hours in a work week, the division must provide overtime. Travel from home to work or work to home is excluded from this definition.

The Fair Labor Standards Act does not consider as work time the time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus or automobile if the team member is away from home at least one night. When the travel away from home is for one day with no overnight stay, all hours spent traveling either as the driver or passenger are considered work time for non-exempt team members. These hours must be included in determining the number of hours worked during the week.

## **SECTION 2. OVERTIME AND COMPENSATORY TIME**

Division directors are responsible for analyzing the division's positions to determine whether those positions are exempt or non-exempt from the overtime pay requirements of the Fair Labor Standards Act. The determination of status as exempt or non-exempt is generally made at the time duties are assigned or when the assignment of duties changes for a position. HRMS will assist in this analysis when requested to do so.

### **Exempt Team members**

Exempt team members are not required to be compensated for overtime. Managers have the discretion to allow exempt staff time off the job when they expend a significant amount of time beyond the regular 40- hour work week to meet unexpected or extraordinary work demands. Managers may want to consider time off when the workload is less demanding to counter-balance the additional time required during a heavy work period. Managers shall exercise prudent care in assuring fairness in granting time off.

Although formal records are not required by OMB, managers are encouraged to initiate their own method of recordkeeping. All accumulated compensatory time not taken will be canceled upon termination of employment.

In the alternative, if an exempt team member is required to expend significant overtime hours on a major project or because of unexpected or extraordinary work demands, the manager may authorize monetary compensation at a rate not to exceed hour-for-hour for all hours worked in excess of 45 per work week.

Division directors must approve significant overtime prior to exempt team members working the additional hours for which they will be requesting compensatory time off or monetary compensation. Exempt team members requesting to work significant overtime must receive approval either verbally or in writing as directed by the division director.

Exempt team members who work or travel on non-scheduled Saturdays and Sundays (weekends) may receive up to eight hours compensatory time on an hour-for-hour basis for each day worked.

Division directors and the OMB director are under no obligation to approve compensatory time off or monetary compensation for exempt team members.

### **Non-Exempt Team members**

Non-exempt team members must be paid overtime. By agreement prior to the hours actually being worked, non-exempt team members must be given either monetary overtime compensation or compensatory time off, at a rate not to exceed time and one-half for each overtime hour when the hours actually worked exceed forty hours in a designated work week. Team member agreements to use a particular form of compensation must be periodically renewed before the time is actually worked. If there is no agreement, monetary compensation must be provided. When determining the total number of hours worked, the time record must be rounded to the nearest quarter hour. For example, a team member who works 41 hours and 7 minutes would be paid 41 hours. A team member who works 40 hours and 8 minutes would be paid for 40 hours and 15 minutes.

Annual leave, sick leave or other paid leave time, such as holidays unless the holiday is worked, is not considered work time for purposes of determining overtime pay. Exceptions may be made by the division director when a non-exempt team member is required to respond under non-scheduled or emergency situations.

Compensatory time may be kept on the books for any length of time but may not exceed 40 hours. When 40 hours are reached, further overtime is paid via payroll. Division directors may limit the accumulation of compensatory time to less than 40 hours and may require that all compensatory time earned be taken within a certain time frame, such as the same month or following the month that it is earned.

Division directors shall establish a formalized method of recording compensatory time for non-exempt team members. A time sheet or time clock should be used for this purpose.

Team members required to punch a timecard must punch in or out within six minutes of their designated start/stop time. Team members who fail to punch the timecard must notify their manager to have the correct time approved and initialed. Repeated failure to punch a timecard may be grounds for disciplinary action.

A non-exempt team member who has accrued compensatory time must, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than the average regular rate received by that team member during the past three years of employment or the final regular rate received by the team member, whichever is higher as required by FLSA.

A team member who has accrued compensatory time must be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the division. The division director may require that a team member use such accrued time.

Monetary payment for overtime worked should normally be provided at the end of the pay period in which it is earned. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due, and in no event may payment be delayed beyond the next pay day.

Prior manager approval to work overtime must be obtained by a non-exempt team member before working hours in excess of 40 in a week. Failure to secure approval to work overtime may subject a team member to disciplinary action up to and including termination of employment.

References: [NDAC 4-07-07](#)

### **SECTION 3. KEY PERSONNEL**

Division directors shall identify key personnel. Key personnel shall provide essential or continuing service during adverse weather conditions when the agency has been officially closed.

Key personnel who are exempt may be given compensatory time on an hour-for-hour basis for working during time periods when the agency is closed, or operations are reduced due to adverse weather conditions.

### **SECTION 4. PAYROLL REPORTING/RECORDING**

Team members who occupy non-exempt positions shall fill out appropriate time records within PeopleSoft or other approved time reporting systems. These records will show the actual hours worked and any leave taken. OMB recommends the time recorded in PeopleSoft are approved by the manager on a weekly basis.

Exempt team members should also use PeopleSoft or approved reporting system to record absences. Records must be maintained for all regular and overtime hours for non-exempt team members. OMB requires that all time records be kept for six years, unless there has been an action filed against OMB, in which case the record must be kept until six years from the last action.

Updated 8/2020

### **SECTION 5. SAFE HARBOR POLICY - EXEMPT TEAM MEMBERS**

The State of North Dakota, as the employer, complies with the salary basis requirements of the [Fair Labor Standards Act \(FLSA\)](#). Therefore, improper deductions from the salaries of exempt team members are prohibited. The State of North Dakota does not allow deductions that would violate the FLSA. If an exempt team member believes an improper deduction has been made to their salary, they must immediately report it to their manager or Human Resource team member. Reports of improper deductions will be promptly investigated. If an improper deduction has occurred, the team member will be promptly reimbursed.

Universal Policy Updated: 12/2022

### **SECTION 6. PERSONNEL RECORDS**

Team member personnel files are open records. Only one official personnel file is maintained per team member. This file must be under the control of the Agency director or a designated representative. A record of access must be in each personnel file. [SFN 17770](#) Team member Records Access Form is used for that purpose.

A team member or the team member's designated representative must be permitted to examine the employee's own personnel file. No material is to be added, removed, or altered in the file; however, a copy

of any document must be provided if requested.

Documents concerning a team member's character or performance may be placed in the team member's file only when the team member has signed them. Should a team member refuse to sign the copy to be filed, the agency director or designated representative shall indicate on the copy that the team member was shown the material, was requested to sign the material to verify that the material had been read, and that the team member refused to sign the copy to be filed. In the presence of a team member and a witness, the agency director or designated representative shall sign and date a statement verifying the refusal of the employee to sign the copy to be filed. The material must then be placed in the file. No anonymous letters are to be placed in a team member's file.

Material found to be without merit or unfounded through an established grievance procedure, must be immediately removed from the file and may not be used against the team member. Records, reports, and correspondence regarding a team member's grievance shall be retained in a file separate from their personnel file.

Medical information about a team member must be maintained in a separate file ([NDCC 44-04-18.1](#)). Medical files are subject to strict confidentiality and should remain in the control of the agency director or designated representative. Exceptions to the confidentiality requirements are as follows:

- Managers may be informed of a team member's medical restrictions on work duties.
- First aid/safety personnel may be informed of a team member's medical status or history, as appropriate.
- Government officials investigating compliance must be provided access or information on request.

Unless one of the exceptions above applies, medical information may not be released without the written consent of the team member. Medical records must be retained for the term of employment plus six years.

Managers should maintain informal notes to use in preparing team member performance evaluations. These notes should not be placed in a team member's file.

When a team member's personnel file has been accessed by a person who is not the agency director or designated representative, the team member should be notified by the agency director or designated representative. The agency director or designated representative should also ensure that the person is observed during the time an employee's file is being examined and that no documents are added, removed, or altered. Personal information must be redacted when copies are made for other individuals. Medical, employee assistance program, and other personal records may be exempt from open records law as defined in [NDCC 44-04-18.1](#).

Any person who requests a copy of a document in a file should be given one, pursuant to the exceptions detailed in this policy. The agency may charge a reasonable cost for making the copy.

Universal Policy Updated: 6/2023

## SECTION 7. RECORDS MANAGEMENT

The Records Management Division of North Dakota Information Technology Department (NDIT) has developed a Records Retention Program and has implemented a Records Retention Schedule that includes retention/destruction of both paper and electronic records. It is the State of North Dakota's policy to preserve all official records in accordance with applicable statutory and regulatory requirements, and to promote access to information by staff, partners, and the public, as appropriate.



Each agency head or designee and records coordinator are responsible for providing the leadership, planning, overall policy, guidance, training, and general oversight of records management for the Agency. Each Agency is required to follow the established policy, which contains the elements below:

- The team members of the Agency are ultimately responsible for creating and preserving records that adequately and properly document the organization, functions, policies, decisions, procedures, and essential transactions of the Agency.
- Manage records, regardless of format, in accordance with applicable statutes, regulations, and policies.
- Maintain electronic records to ensure they are accessible throughout their entire life cycle.
- Secure records to protect the legal and financial rights of the government and persons affected by government activities.
- Dispose of records (electronic or paper) as specified in the approved records retention schedules.
- Assume responsibility for email and other electronic accounts upon the departure of a team member.

This includes ensuring that a Records Management Program is developed which includes retention and disposal of both paper and electronic records.

In addition, all supervisory level team members who are involuntarily terminated, resign or depart without notice or who die unexpectedly while employed shall have their email and other electronic accounts placed on hold until an individual designated by the agency head has reviewed the accounts to determine what, if any, documents are subject to records retention obligations or are otherwise necessary to preserve in order to meet business needs or legal obligations. Supervisory team members that are placed on administrative leave pending disciplinary action shall have their accounts placed on hold to ensure the contents cannot be changed until a final personnel decision. In the event the agency head leaves for any of the above reasons, their email account must be preserved for 12 months, and their accounts must be reviewed by the agency head's successor or state archivist.

Records retention schedules for all divisions are available on NDI's website.

Reference : [NDCC 54-46-08](#)

Universal Policy Updated: 8/2023

## **SECTION 8. LITIGATION HOLD ORDER**

When the State of North Dakota is subject to or reasonably foresees that it will become involved in litigation, it will immediately implement "litigation hold" procedures to preserve relevant documents, electronic information, and other materials. A "litigation hold" is the process of identifying and preserving such materials. A "litigation hold" may impact established records management plans, requiring certain documents and electronic information to be retained for longer periods of time in an unaltered form.

The Agency's "litigation hold" and preservation of evidence procedures may include any and/or all of the following, based upon the situation:

1. If team members become aware of potential or actual litigation, they should contact the assistant attorney general or special assistant attorney general assigned to the agency. If an assistant attorney general or special assistant attorney general is not assigned to your agency, managers should contact the North Dakota Solicitor General (Director of Civil Litigation) at 701.328.3640.
2. A Destruction Hold Notice ([SFN 52376](#)) should be issued by the agency or its assigned assistant



attorney general or special assistant attorney general based on currently available information. This can be revised after steps 3 and 4 are completed, if needed.

3. Appropriate agency personnel and the assistant attorney general or special assistant attorney general assigned to the agency, in conjunction with the North Dakota Attorney General or the assistant attorney general designated to represent the Agency in the litigation, will meet to determine whether a litigation hold should be implemented. "Appropriate agency personnel" includes the person or persons most knowledgeable about the relevant computer systems and network operations at the agency, the storage and retrieval of information, and procedures for backing up and archiving electronic information.
4. If a decision is made to implement a litigation hold, the individuals at the meeting will determine the scope of the litigation hold and how best to implement the litigation hold. The individuals at the meeting will:
  - a. Identify the information, including electronically stored information that may be relevant to the litigation.
  - b. Identify who may have the relevant documents, electronic information, or other materials in their possession.
  - c. Identify all locations and storage media of such materials. With respect to electronic information, such locations may include:
    - i. Desktop and laptop computers and network servers
    - ii. Email servers and hand-held devices
    - iii. Storage devices
    - iv. Offsite storage
    - v. Remote computers with network connections
    - vi. CDs, DVDs, Memory Sticks, and other portable storage devices
    - vii. Home computers or equipment
5. Identify how best to implement the litigation hold, including how to preserve electronic data. Implementation includes:
  - a. Arranging for the appropriate individual (agency head, division director, assistant attorney general), to send a written notice to team members at all applicable organizational levels.
  - b. Specifying the documents and other materials as to which diligent efforts should be made to preserve and the method and places of preservation.
  - c. Notifying the appropriate agency personnel of steps, the agency needs to take to preserve electronic data, such as requesting segregation, removal, or exchange of computers or
  - d. Copying or cloning of hard drives.
  - e. Notifying the appropriate individual(s) in SHSND of steps needed to preserve electronic data, such as halting routine deletion of email, halting automatic updates or cleaning of computers, preserving backup tapes beyond the routine write-over cycle, or transferring certain electronic data to a dedicated server.
  - f. Determining how to monitor compliance with the litigation hold notice by periodically checking back with affected management and staff.
  - g. Determining how to keep a written record of steps taken to preserve documents, electronic information, and other materials to demonstrate compliance with the duty to preserve potential evidence.
  - h. If needed, determining who will assist in reviewing documents for production and assertion of the privileges.
  - i. Determining how affected staff will be notified when the litigation hold has been canceled or removed.

## SECTION 9. TEAM MEMBER ORIENTATION

Managers shall orient new team members to their positions to help them foster an understanding of the agency's mission, make a successful adjustment to the new job, understand their role and how they fit into the organization, achieve objectives and shorten the learning curve, and develop a positive working relationship. The preparation for orientation begins before the team member comes to work and continues the first day and during the first weeks and months of the job. Performance standards and work rules should be revisited within six months of starting. For more information on orientation for state team members, click [here](#). As part of orientation, new team members will be enrolled in the onboarding process in PeopleSoft, or they will work with their agency manager or human resources to collect the needed new hire information. Managers will enroll new team members in the State's New Team member Orientation program. This online program provides information on benefits, as well as rules and regulations that state team members must follow. For a course description and to enroll, visit HRMS' training website at [Training Topics \(sharepoint.com\)](#).

All new team members will additionally be provided orientation on workplace safety issues that relate to their position including a review of job specific safe operating procedures (SOPs), general safety requirements, incident reporting requirements, the designated medical provider program, evacuation procedures, and office ergonomics. All office team members shall have an initial ergonomic workstation assessment at the time of hire.

All new team members shall be required to review and acknowledge OMB policies on discrimination, including sexual and other forms of unlawful harassment, requests for reasonable accommodations, workplace threats of violence and emergencies, including fire, natural disasters/severe weather, and bomb threats.

Updated: 8/2020

## CHAPTER 6: SALARY ADMINISTRATION

The State of North Dakota Pay Administration Plan includes all the requirements set forth in Administrative Rules [NDACC 4-07-02](#) entitled "Salary Administration Procedures."

### SECTION 1. WAGE AND SALARY LEVELS

The level of wages or salaries provided to a classified team member must be within the pay grade range established for the classification. Compensation is based on a 40-hour workweek. Each team member is required to work a regular 40-hour workweek or be paid as a part-time or hourly team member. Full-time team members receive the full amount of the established monthly rate. Part-time team members receive a percentage of the established monthly rate based on the proportion of the month worked. Part-time team members are those team members who work regularly scheduled hours (but less than 40 hours per week), which are determined prior to the beginning of the monthly pay period.

Prior to extending a wage or salary offer to a team member or prospective team member in filling a regular position, the manager must ensure that:

1. The position is a legislatively authorized position.
2. The position is appropriately classified.

Provided the above criteria have been met, agency directors may determine a salary level within the established pay grade range. The salary, together with authorized benefits, will reflect the appropriate compensation for each team member hired.

### SECTION 2. CHANGES TO WAGE AND SALARY LEVELS

Adjustments to the wage or salary level of division directors are made by the Agency director or designee. Adjustments to the wage or salary level of all other team members require the approval of authorized agency management.

Adjustments to the wage or salary level of team members may not be considered automatic or across-the-board unless expressly authorized by the legislative action or the Agency director. All salary adjustments must be in compliance with the administrative rules on salary administration procedures in [NDAC 4-07-02](#).

### SECTION 3. PERFORMANCE BONUS

The Team Member Performance Bonus program allows agencies to recognize and reward regular team members for exceptional performance or work achievement.

The division designee must document in writing to the Agency head or designee the team member's exceptional efforts and accomplishments and that the following technical requirements have been met:

- The team member has held a position in state government for at least one year before a bonus is paid.
- The team member is a full-time or part-time regular non-probationary team member holding a regularly funded non-temporary position.
- The team member's overall annual performance evaluation satisfies the agency's performance bonus program criteria for receiving a bonus.

- The team member has not received a previous performance bonus during the fiscal year.
- No performance bonus may exceed \$1,500.

Agency directors and managers may develop job-specific guidelines or criteria for their work unit to assist with the determination of performance bonuses.

A performance bonus is subject to state and federal taxes and withholdings. Amounts paid under this plan are not included in the calculation of a team member's hourly rate of pay nor benefit plan calculations tied to a team member's salary.

The agency authorized personnel will provide the oversight on this performance bonus program, seeking to ensure effectiveness, fairness, equity, and non-discriminatory employment practices are exercised across the organization.

## **SECTION 4. RETENTION BONUS**

A retention bonus may be given as an incentive to retain a team member within an agency unless the team member is leaving to work for another state agency. If, however, this rule would result in a significant impact on the agency or negative fiscal consequences to the State, an exception may be sought under [NDAC 4-07-02-06](#).

All positions/occupations in the agency are considered eligible for a retention bonus and may be designated hard-to-fill based on one or more of the following criteria:

1. Demand exceeds supply.
2. Special qualifications are required.
3. Competition with other employers is the intense.
4. There is a risk of losing an incumbent with rare skills.
5. The position is filled by a highly skilled team member who is in high demand in the marketplace.
6. Loss of the team member would result in significant replacement costs.
7. The position is filled by key personnel.
8. The position has other unique recruitment or retention issues identified and documented by the appointing authority.

## **RECRUITMENT BONUS**

A recruitment bonus may be used only in extraordinarily difficult labor-market circumstances where the demand for such talent exceeds supply and there is a need to fill a position. The agency will first attempt to use its usual recruitment methods prior to payment of any recruitment bonus. Review [NDAC 4-07-02-06](#) and [NDCC 54-06-31](#) for details and qualifications.

## **REFERRAL BONUS**

A referral bonus may be used only in extraordinary circumstances where there is a need to fill a position and usual recruitment methods are unsatisfactory. Identification of eligible positions or occupations considered hard to fill will be made by the Human Resources department. Review NDAC [4-07-02-06](#) and [NDCC 54-06-31](#) for details and qualifications.

## **SECTION 5. PARTIAL MONTHS OF SERVICE**

Team members working an incomplete month will be paid a prorated salary for the time worked. For additional information contact your agency Payroll section or OMB Fiscal Management Division.

Universal Policy Updated: 6/2023

## CHAPTER 7: LEAVE AND TEAM MEMBER BENEFITS

During employment with the State of North Dakota team members are eligible for numerous benefits that are an important part of their total earnings. Many of the benefits available to team members are provided at no cost, while some are available at a cost should the team member wish to participate.

A probationary or regular team member who is absent from work in a paid leave status continues to earn fringe benefits, including annual and sick leave. Benefits will be prorated if a team member works part-time.

### SECTION 1. LEAVE APPROVAL

Division directors have the authority to approve leave. This authority may be delegated to managers. The director of Office of Management and Budget (OMB) has the authority to approve leave of division directors. All individuals with authority to approve leave are responsible for the recordkeeping and reporting required by the state payroll accounting system.

Division directors have the authority to make eligibility determinations and approve paid or unpaid leave that qualifies for family medical leave under Section 3 for team members of their division. The director of OMB has the authority to approve leave of division directors which qualifies for family medical leave under Section 3.

Individuals in positions with authority to approve leave for team members may be referred to as the “approving authority” throughout this chapter.

### SECTION 2. LEAVE

#### Annual Leave

The State of North Dakota provides paid annual leave as a benefit to team members who work in a regular position. Annual leave is earned starting on the first day of employment in a regular position according to the following schedule:

Length of Service	Hours Earned/Month	Hours Earned/Year
0-3 complete years	8	96
Beginning of 4th year to 7 complete years	10	120
Beginning of 8th year to 12 complete years	12	144
Beginning of 13th year to 18 complete years	14	168
Beginning of 19th year and over	16	192

Prorated hours of annual leave will be granted to team members in regular positions who work less than the standard 40-hour work week. When calculating earned annual leave, work time includes holidays and paid leave used.

#### Usage

Annual leave may not be used before it is earned.

Requests to use annual leave will be approved whenever possible. Excluding emergency situations, annual leave requests must be made and approved in advance of the annual leave being taken. Team members who want to attend a legislative hearing during worktime due to personal or non-work-related interest must take annual leave to attend. A leave request may be denied if the absence would unduly disrupt the business operations or services of the agency or other related reasons.

Temporary team members are not eligible to earn annual leave. If a temporary team member transfers to a regular position with no break in service longer than one year, the team member will receive credit for their prior length of service when determining the annual leave earning rate.

### **Reinstatement/Transfer of Leave Balance**

A team member who is rehired by the state within three years of termination must be credited with their prior service when determining their annual leave earning rate going forward. When a team member transfers from one state agency to another and there is no break in service, the “sending” agency must pay the team member the value of the earned annual leave hours the “receiving” agency will not accept.

### **Balance Limits**

No more than 240 hours of earned and unused annual leave may be carried forward past April 30 of each year. Any hours in excess of 240 hours will be eliminated after April 30. A team member’s manager may require a team member to use earned annual leave prior to using earned compensatory time for leave purposes.

### **Payment of Balance**

A team member may not be paid for unused annual leave while the team member remains in the service of the agency except when the team member takes a long-term leave of absence (six months or more), goes on educational leave, transfers to temporary employment, or if specifically requested by the employing agency and approved by HRMS due to a business-related reason prior to April 30 of each year.

All earned and unused annual leave is payable upon termination of employment, regardless of the reason for termination.

Reference: [NDAC 4-07-12](#)

Universal Policy Updated: 6/2023

### **Sick Leave**

The State of North Dakota provides paid sick leave as a benefit to its team members who work in regular positions.

Sick leave: An approved absence from work with pay for use in accordance with [NDAC 4-07-13-07](#).

Eligible family member: The team member’s spouse, parent (natural, adoptive, foster and stepparent), child (natural, adoptive, foster and stepchild), or any other family member who is financially or legally dependent upon the team member for financial or legal support.

Serious health condition: A disabling physical or mental illness, injury, impairment, or condition involving inpatient care or outpatient care requiring continuing treatment by a health care provider.

Sick leave is earned beginning on the first day of employment in a regular position. Full-time team members in regular positions earn (8) eight hours of sick leave for each month of full-time employment with no maximum accumulation.

Prorated hours of sick leave will be granted to team members in regular positions who work less than the standard 40- hour work week. When calculating earned sick leave, work time includes holidays and paid leave used.

Temporary team members are not eligible to earn sick leave.

Sick leave may not be used before it is earned. Team members who need to use sick leave in excess of their accrued sick leave may be required to utilize another type of paid leave.

Sick leave may be used by a team member for the following reasons:

- The team member is ill or injured and is unable to work.
- The team member has an appointment for the diagnosis or treatment of a medically related condition.
- For the birth or placement of an adopted/foster child not to exceed six weeks (240 hours) within the first six months to care for the child. This applies to both parents. This does not prevent a team member from using additional sick leave for the team member's own illness, medical needs or health needs following the birth of the child.
- For the death of the team member's child not to exceed 160 hours within six months following the death of the child.
- The team member wishes to attend to the needs of the team member's eligible family members who are ill or to assist them in obtaining other services related to their health and well-being.
  - Sick leave used for these purposes may not exceed eighty (80) hours per calendar year.
  - Upon approval, a team member may take up to an additional 480 hours, per calendar year, of the team member's accrued sick leave to care for the team member's child, spouse, or parent with a serious health condition. The agency may require the team member to provide written verification of the serious health condition by a health care provider.
- The team member is seeking services or assisting the team member's spouse, parent, child, or sibling in obtaining services, relating to domestic violence, a sex offense, stalking, or terrorizing. At the discretion of the team member's manager, the sick leave hours used for this purpose may be limited to forty hours per calendar year.
- The team member is a participant in an employee assistance program.

For all uses of sick leave, the manager has the option to request verification from the team member's healthcare provider.

### **Reinstatement/Transfer of Leave Balances**

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



When a team member transfers from one state agency or university system to another and there is no break in service, the “receiving” agency will accept all accrued sick leave hours. State agencies covered by the North Dakota merit system shall accept all accrued sick leave hours of a human service zone team member in a position classified by HRMS.

### **Payment of Balance**

Team members with ten years of continuous state employment who leave the employment of the state are eligible for payment of ten percent of their unused sick leave balance. A team member may not be paid for unused sick leave while the team member remains in the service of the agency.

References: [NDAC 4-07-13](#), [NDCC 54-06-14](#); [54-52.4-03](#)

Updated 6/2023

### **Shared Leave Program**

The State of North Dakota, as the employer, provides eligible permanent and probationary team members the ability to receive up to four months of donated annual and/or sick leave, in a 12-month period from eligible state of ND team members.

### **Leave Sharing Eligibility**

#### **Annual Leave Sharing**

A team member is eligible for donated annual leave if the team member, relative or household member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the team member to take leave without pay or terminate employment.

#### **Sick Leave Sharing**

A team member is eligible for donated sick leave if the team member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the team member to take leave without pay or terminate employment.

### **Recipient Eligibility**

Permanent and probationary team members are eligible to receive shared leave pursuant to the following conditions:

1. The team member has submitted medical documentation from a healthcare provider regarding the medical condition through PeopleSoft. Acceptable documentation includes Shared Leave Program Certification of Health Care Provider, FMLA Certification of Health Care Provider for Employee's Serious Medical Condition or Employee's Family Member Serious Medical Condition.
2. The team member has exhausted their own paid leave (annual leave, sick leave, or comp-time).
3. The team member abides by all related leave policies and processes.
4. The team member's use of shared leave, including both annual and sick leave, does not exceed 693 hours in any 12-month period.

HRMS will make a determination on shared leave requests after consultation with the team member's agency designee. Donated leave received by the team member may be used only for the approved reasons. If a team member receives more donated leave than needed, the extra leave will be returned to the donor. Donated leave is not paid out to the team member at time of separation.

## **Donation Eligibility**

Permanent and probationary team members are eligible to donate annual and/or sick leave to a team member on the shared leave list pursuant to the following conditions:

1. The team member retains 40 hours of annual leave after the leave donation has been made.
2. The team member donates no more than five (5) percent of their sick leave in a 30-day period.

Reference: [NDCC 54-06-14.7](#)

Universal Policy Updated: 8/2023

## **Funeral Leave**

The State of North Dakota, as the employer, provides up to twenty-four (24) working hours of paid leave for team members to attend or make arrangements for a funeral as a result of a death in the team member's family.

Family: Includes a team member's husband, wife, son, daughter, father, mother, father-in-law, mother-in-law, stepparents, brother, sister, stepsiblings, brother-in-law, sister-in-law, grandparents, spouse's grandparents, grandchildren, stepchildren, foster parents, foster children, daughter-in-law, and son-in-law.

Funeral leave: An approved absence from work with pay for a team member to attend or make arrangements for a funeral because of a death in the team member's family.

Funeral leave is a separate type of paid leave and is not considered to be annual or sick leave.

Funeral Leave is prorated for team members working less than 40 hours per week (i.e. a team member normally scheduled to work 20 hours per week would be eligible for 12 working hours of Funeral Leave).

Temporary team members are not eligible for paid funeral leave.

References: [NDAC 4-07-14-02, 03, 04](#)

Universal Policy Updated: 2/2024

## **Honor Guard Leave**

The State of North Dakota, as the employer, provides up to twenty-four (24) working hours of leave with pay per calendar year for a team member to participate as an honor guard for a funeral service of a veteran.

Honor Guard: An individual with an essential ceremonial role in the funeral service of a veteran.

Honor Guard Leave: Approved absence from work with pay for a team member to participate in an honor guard for a funeral service of a veteran.

Individual with an Essential Ceremonial Role: performing as part of the official funeral service of a veteran is a member of the flagbearers, a member of the flag-folding team, member of the firing party, the bugler, or the honor guard captain.

Honor guard leave is a separate type of paid leave and is not considered to be annual or sick leave.

Honor guard leave is prorated for team members working less than 40 hours per week (i.e., a team member normally scheduled to work 20 hours per week would be eligible for 12 working hours of honor guard leave.)

Temporary team members are not eligible for paid honor guard leave.

References: [NDAC 4-07-14-02, 03, 04](#)

Universal Policy Updated: 10/2018

## Holidays

The State of North Dakota, as the employer, provides 10 paid holidays to team members who work in regular positions. Recognized holidays for state government purposes:

1. The first day of January, which is New Year's Day.
2. The third Monday in January, which is Martin Luther King Day, in recognition of "the life, legacy, and dream of Martin Luther King, Jr."
3. The third Monday in February, in recognition of the birthday of George Washington.
4. The Friday preceding Easter Sunday, commonly known as Good Friday.
5. The last Monday in May, which is Memorial Day.
6. The fourth day of July, which is the anniversary of the Declaration of Independence.
7. The first Monday in September, which is Labor Day.
8. The eleventh day of November, which is Veterans' Day.
9. The fourth Thursday in November, which is Thanksgiving Day.
10. The twenty-fifth day of December, which is Christmas Day.
11. Every day appointed by the President of the United States or by the Governor of this state for a public holiday ([NDCC Section 1-03-01](#)).

If such holiday falls on Saturday, the preceding Friday will be the holiday; if the holiday falls on Sunday, the Monday following will be the holiday ([NDCC Sections 1-03-02 and 1-03-02.1](#)).

State offices close at 12 noon on December 24, Christmas Eve Day, if the 24th falls on Monday, Tuesday, Wednesday, or Thursday ([NDCC Section 1-03-01.1](#)).

## Holiday Work Schedule Adjustment Options

The standard work week is 40 hours, consisting of five 8-hour days. A holiday is considered to be an 8-hour day except for December 24 which is 4 hours. Therefore, adjustments must be made for those team members working an alternate work schedule.

If a state team member is scheduled to work on a holiday, the team member may be provided an alternate day off.

## Authority:

[NDAC 4-07-06; NDCC Section 1-03-01](#)

Universal Policy Updated 6/2023

## Jury and Witness Leave

Team members selected for jury duty must be granted an approved absence from work with pay, except that an amount of pay equal to the amount the team member received from the court for jury duty service must be deducted from the team member's regular pay. However, if a team member is on authorized annual leave while performing jury duty, the team member may retain the fee paid by the court and the team member's pay may not be reduced.

Team members who are called to appear as a witness or expert witness on behalf of the employer are reimbursed by the employer for mileage, meals, and lodging. Also, the team member must be paid the team member's regular rate of compensation for time spent as a witness. In this circumstance, the team member is not considered on leave.

A team member may retain a witness fee paid by a party only when each of the following applies:

- The team member's agency did not reimburse the team member for mileage, meals, and lodging.
- The team member was on authorized leave.

If a team member performs witness duties unrelated to the team member's official capacity or because the team member is personally interested in the proceedings or because the team member volunteers to do so, they must be placed on annual leave or leave without pay status. In these situations, the team member may retain any witness fee provided to the team member.

Temporary team members are not eligible for paid jury or witness leave unless they perform witness duties related to the team member's official capacity.

Ref: [NDAC 4-07-16](#)

Universal Policy Updated 2/2024

### **Organ or Bone Marrow Donation Leave**

An agency may grant a leave of absence, not to exceed 20 workdays, to a team member for the purpose of donating an organ or bone marrow. A team member may request and use donated annual or sick leave for the purpose of donating an organ or bone marrow but cannot exceed the limitations of donated leave as stated in the [State Leave Sharing policy](#).

If a team member does not receive the full amount of leave needed for the donation, the agency director or designee may grant a paid leave of absence for the remainder of the leave up to the maximum total of 20 days. The agency may require verification by a physician regarding the purpose and length of the leave requested. Any paid leave of absence granted under this section may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the team member is otherwise eligible.

Universal Policy Updated 2/2023

### **Leave Without Pay ([NDAC 4-07-15](#))**

Leave without pay is an approved leave of absence from work without pay and may be granted to a team member who has maintained a satisfactory service record. Annual and sick leave do not accrue during leave without pay, but team members do retain any unused sick and annual leave balances.

If the leave is to last more than 14 consecutive days, the conditions of the leave, the status of benefits, and the terms and conditions of the return to work must be in writing between the team member and division director. Leave without pay may not be granted for more than one year. Should a team member fail to

return to work at the expiration of the leave, the team member may be terminated unless other arrangements have been made.

#### **Disaster Service Volunteer Leave ([NDCC 54-06-14.3](#))**

If an order or proclamation is issued declaring a state of disaster or emergency, or a declaration of at least a level II disaster by the American Red Cross in this or any other state, the division director may grant a leave of absence to any full-time team member who is certified by the American Red Cross as a disaster services volunteer. The leave of absence must be for the purpose of allowing that team member, upon request by the American Red Cross, to participate in disaster relief services. A person on leave under this section is not deemed to be a team member of the State for the purposes of workforce safety and insurance. The cumulative leave granted under this section may not exceed five working days during any calendar year.

The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the team member is otherwise eligible.

#### **Emergency Service Volunteer Leave ([NDCC 54-06-27](#))**

If an order or proclamation is issued declaring a state of disaster or emergency declaration of at least a level II disaster by the American Red Cross in this or any other state, the division director may grant a leave of absence to any full-time team member who is an emergency medical service provider, a member of the civil air patrol, a firefighter, police officer, or emergency radio operator, or who performs other services necessary in an emergency. The leave of absence must be for the purpose of allowing a team member to provide voluntary emergency services. A team member on leave under this section is not deemed to be a team member of the State for the purposes of workforce safety and insurance. The cumulative leave may not exceed five working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual or sick leave, or accrued overtime for which the team member is otherwise eligible.

The division director may grant temporary short-term leave with compensation to any full-time team member for the purpose of allowing the team member to respond to an emergency call if the team member is a volunteer emergency medical service provider, firefighter, emergency radio operator, or a member of the civil air patrol.

#### **Military Leave**

Team members who serve in the reserve components of the US Armed Forces (Reserve or National Guard) may be required to take leave to attend military training, to provide disaster response, or for mobilization or deployment. These team members are entitled to a leave of absence from their state position for any military duty including traveling to and from a duty station without loss of status or efficiency rating.

Team members that have been in the continuous employment of the state for 90 days will receive 20 workdays each calendar year without loss of pay for any military duty. In addition, any leave of absence necessitated by a full or partial mobilization of the reserve and national guard forces of the United States of America, or emergency state active duty, in which official orders to active duty are issued, team members will be granted 10 additional days of military leave per calendar year to attend active-duty service.

If leave is required for any military related duty or travel (including to and from a duty station) on a team member's scheduled workday, the team member will be given the option of time off as paid military leave, annual leave, unpaid leave or given the opportunity to reschedule the work period to allow for military duty to occur during time off.

Seniority and time in service:

- Annual and sick leave will not accrue during time of active service for deployment.
- Annual or paid leave time accrual rate will be calculated as if there is continual employment.

Re-employment:

A team member who within 90 days after receiving a discharge other than dishonorable from active military service will be reinstated to employment to their former position or one of like seniority, status, and pay, and is immune from discharge from the position except for cause, as defined by the North Dakota Department of Veterans' Affairs for a period of one year after entering back into the position.

Reference:

[USERRA 38 U.S.C. 4301-4335](#)

[NDCC 37-01-25](#)

Universal Policy Updated: 8/2023

### SECTION 3. GROUP BENEFIT PROGRAMS

Group benefit programs are administered by the North Dakota Public Employees Retirement System (NDPERS). Information about each of the benefit program can be obtained from the [NDPERS website](#). Team members will utilize the NDPERS website [Member Self Service portal](#) to enroll in benefit programs. For additional assistance, contact NDPERS through the website or by calling 701.328.3900 or toll free at 800.803.7377.

Universal Policy Updated: 12/2022

### SECTION 4. TRAVEL AND PER DIEM

The State reimburses team member expenses for meals and lodging while the team member is away from the team member's normal workplace and residence. Refer to OMB's Fiscal and Administrative Policy for reimbursable travel guidelines.

References: [NDCC 44-08-04](#)

Updated: 9/2015

## CHAPTER 8 EMPLOYEE ASSISTANCE, FAMILY & MEDICAL LEAVE, AND GINA

(For definitions used in this chapter, see Chapter 1, Section 4.)

### SECTION 1. EMPLOYEE ASSISTANCE PROGRAM

The policy of the State of North Dakota is to assist, in a strictly confidential manner, team members who are experiencing problems relating to mental or emotional illness, marital or family stress, chemical dependency, and other concerns. The Employee Assistance Program (EAP) is available to all regular team members and their immediate family members (spouse and children living in the same household as the team member and dependent children attending school). A team member or team member's immediate family member may contact an EAP provider directly for assistance. Self-referrals are strongly encouraged.

Managers may refer team members to the EAP. A team member is not required to accept a manager's referral to the EAP. However, a team member's continued unsatisfactory job performance may result in discipline up to and including termination of employment.

No team member will have job security or promotional opportunities jeopardized by coming forward to request counseling or EAP assistance. Sick leave may be used to attend EAP sessions, please consult the Sick Leave Universal Policy for more information click [here](#).

EAP program details are found at: <https://www.ndpers.nd.gov/active-members/insurance-plans/ndpers-employee-assistance-program-eap>.

Universal policy Updated: 6/2023

### SECTION 2. FAMILY MEDICAL LEAVE ACT

The State of North Dakota, as the employer, has established a Family Medical Leave Act (FMLA) policy that provides guidance to the handling of these team member situations in a sensitive and confidential manner. This policy is not an exhaustive description of state and federal laws relating to family and medical leave (i.e., FMLA leave is different from family sick leave as allowed under [NDAC 4-07-13-07](#). Team members should consult with their employing agency's HR or Human Resource Management Solutions when these situations arise to ensure compliance with all applicable laws.

#### Eligibility

Team members are eligible for FMLA leave if they have been employed with the State of North Dakota for at least 12 months and have worked at least 1,250 hours during the previous 12-month period.

#### Program Details

FMLA provides eligible team members with up to 12 weeks of unpaid, job-protected leave for the following reasons:

- a. The birth or care of the team member's child within the first 12 months after the birth.
- b. The placement or care of a newly adopted or foster child within the first 12 months after placement.
- c. Care for the team member's spouse, son, daughter, or parent, who has a serious health condition. The State of North Dakota follows the definitions of spouse, son, daughter, and parent as indicated by [29 C.F.R. § 825](#). The employing agency may require the team member provide reasonable documentation or a statement of family relationship.



- d. A serious health condition that makes the team member unable to work or perform any one of the essential functions of the team member's job. Examples would include an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the team member from performing the functions of the job or prevents the qualified family member from participating in school or other daily activities.
- e. A qualifying event arising from a team member's spouse, child, or parent that is a covered military member on active duty or has been notified of impending call or order to active duty in the armed forces. Examples would include short-notice deployment, military events and related activities, counseling, post-deployment activities, and additional activities that may arise out of active duty or call to active-duty status.

A team member who is the spouse, parent, child, or next of kin of a current member of the armed forces who was injured in the line of duty on active duty in the armed forces may be eligible for a combined total of 26 weeks of FMLA leave for any qualifying reason during the 12-month period. Family members may also take 26 weeks of FMLA leave for a veteran who is undergoing medical treatment, recuperation, or therapy and who was a service-member at any time during the five years preceding the date in which the injury or illness was incurred in the line of duty and manifested itself before or after the member became a veteran.

A team member and spouse who work for the same employer are entitled to a combined total of 12 weeks of FMLA leave if taken for the birth, adoption or foster care of a healthy child, or to care for the team member's parent with a serious health condition. A team member and spouse who work for the same employer are each entitled to 12 weeks of FMLA leave if the child with a serious health condition was born or placed for adoption or foster care. The team member and spouse may be limited to a combined total of 26 weeks of FMLA leave when care for a covered service-member with a serious injury or illness is taken in addition to FMLA leave for birth of the team member's son or daughter or to care for the healthy child after birth, for placement of a healthy son or daughter with the team member for adoption or foster care, to care for the child after placement, or to care for the team member's parent with a serious health condition during a single 12-month period.

When medically necessary, team members may take FMLA 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.

The FMLA leave entitlement period will be determined by a rolling 12-month period measured backward from the date a team member first uses any leave under this section. Any unpaid FMLA leave used during this 12-month period will be deducted from the total amount of FMLA leave provided. If a team member is eligible for FMLA leave, it will run concurrently to the team member's accrued paid leave used and donated leave received if applicable.

While on FMLA leave, the employing agency will continue to pay employer paid benefit premiums for the team member.

### **Required Documentation**

A team member requesting FMLA leave must complete the required paperwork, obtain medical certification, and submit the completed documents to the employing agency as soon as the need for



FMLA leave is known. Forms should be obtained from the employing agency's HR. Failure to provide the requested information or medical certification with the leave request may result in denial of the leave until it is provided.

If a team member wishes to return to work prior to the expiration of a FMLA leave of absence, written notification must be given to the employing agency prior to the team member's planned return. A team member may also be required to submit to additional examinations by a health care provider selected and paid for by the employing agency. Any recertification requested by the employing agency shall be at the team member's expense. The employing agency will not request recertification until the minimum duration has passed unless:

- the team member requests a leave extension;
- circumstances described by the previous certification have changed significantly; or
- the employing agency receives information that casts doubt upon the continuing validity of the certification.

A team member who needs to request an extension of FMLA leave due to the continuation, recurrence or onset of his/her own serious health condition or of the serious health condition of the team member's spouse, child, or parent, must submit a written request for an extension to the employing agency.

### **Return to Work**

Upon return from FMLA leave, a team member who is not designated as a "key team member" will be restored to their original position or an equivalent position with equivalent pay, benefits, and any other employment rights that existed at commencement of the leave or that may have accrued during the FMLA leave period. A team member designated as a "key team member" may not be provided restoration rights upon return from FMLA leave. Whether a position is an "equivalent position" is the decision of the employing agency. Individuals designated as "key team members" under FMLA will be notified of such designation at or before the time FMLA leave commences. If the restoration of a key team member causes "substantial and grievous economic injury" to the employing agency, reinstatement upon returning from leave may not occur.

A team member who takes leave for their own serious health condition may be required to provide a fitness for duty certification signed by the health care provider prior to their return to work. If a team member fails to submit the required fitness for duty certification, the team member's restoration to their position may be delayed or denied.

A team member who fails to return at the end of the FMLA leave will be considered to have voluntarily resigned unless additional leave as a reasonable accommodation under the Americans with Disabilities Act is necessary. If a team member fails to return from an FMLA leave, the employing agency may recoup the cost of employer paid benefit plan premiums for any period of the FMLA leave which was taken as unpaid leave, unless the reason the team member does not return is due to:

- The continuation, recurrence, or onset of a serious health condition of the team member or the team member's family member which would otherwise entitle the team member to leave under FMLA; or
- Other circumstances beyond the team member's control such as caring for a newborn with a serious health condition, the spouse is transferred to a location more than 75 miles from the team member's worksite, etc.

If the employing agency enacts a reduction-in-force during the team member's absence and the team

member would have lost his/her position, the team member retains any rights under the employing agency's Reduction in Force policy but may not be eligible for reinstatement under FMLA.

### **Paid Leave Use and Holiday Considerations**

All unpaid FMLA leave used will be deducted from the total amount of FMLA leave provided and runs concurrently with any paid and donated leave the team member uses during this time. A team member must use any accrued paid and donated leave received before unpaid FMLA leave will be authorized. Team members who have exhausted the applicable types of paid leave will be provided unpaid leave to fulfill the authorized period of FMLA leave. Team members in an unpaid leave status will not accrue annual or sick leave during the period of unpaid leave.

If a holiday falls within a week in which the team member needs a full week of FMLA leave, the holiday will count against the FMLA leave entitlement. If the team member needs less than a full week of FMLA leave and a paid holiday occurs during the leave period, the holiday cannot be counted against the 12-week entitlement unless the team member would be otherwise scheduled and expected to work if not on leave.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

References: [29 CFR §825](#), [NDCC 54-52.4-03](#), [NDAC 4-07-13-07](#)

Universal Policy Updated: 6/2023

## **SECTION 3. THE GENETIC INFORMATION NONDISCRIMINATION ACT**

The State of ND strictly prohibits discrimination based on genetic information. The State of ND does not collect, consider, or make employment or benefit decisions based on genetic information. The State of ND does not use genetic information or genetic testing to identify individuals (applicants or team members) who are especially susceptible to general workplace risks, who may become unable to work or who are likely to incur significant health care costs for either themselves or their dependents. Accordingly, applicants for employment or team members of the State of ND will not be required to undergo any genetic testing or reveal genetic information to any state Agency.

Managers will ensure the following safe harbor notice is attached to the medical certification when an agency requests medical information to certify a team member's serious health condition under the FMLA.

"The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you do not provide any genetic information when responding to this request for medical information.

'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

This notice is not required when a team member's immediate family member has a serious health condition.

Universal Policy Updated: 10/2022

## CHAPTER 9 AWARDS AND RECOGNITION

### SECTION 1. SERVICE AWARD PROGRAM

The years of service awards apply to all regular and appointed team members who have completed the below identified milestones of full-time employment with the State of North Dakota. Team members who have left state employment and return will begin to accumulate time, which is added to the previous years of service to determine service awards.

The type of awards given to team members is as follows:

- Three years – certificate or plaque and a gift not to exceed \$25
- Five years – certificate or plaque and a gift not to exceed \$50
- Ten years – certificate or plaque and a gift not to exceed \$100
- Fifteen years – certificate or plaque and a gift not to exceed \$150
- Twenty years – certificate or plaque and a gift not to exceed \$200
- Twenty-five years – certificate or plaque and a gift not to exceed \$250
- Thirty years – certificate or plaque and a gift not to exceed \$300
- Thirty-five years – certificate or plaque and a gift not to exceed \$350
- Forty years – certificate or plaque and a gift not to exceed \$400
- Forty-five years – certificate or plaque and a gift not to exceed \$450
- Fifty years and every five-year increment thereafter – certificate or plaque and a gift not to exceed \$500

Reference: [NDAC 4-07-18](#)

Universal Policy Updated 6/2023

### SECTION 2. RETIREMENT AWARDS

A retirement award shall be provided to a team member who has a minimum of 15-years of state service and who has not been previously recognized by the State as follows:

- A retirement certificate signed by the Governor and/or a plaque
- A gift with a value not to exceed \$200

A farewell party may be provided upon agreement of the team member and agency.

Retirement awards may be withheld if there are documented problems with a team member's performance. A team member may not receive cash as part of a service or retirement award program. An agency may provide a gift certificate or gift card.

Please note: retirement award gift certificate or gift cards are taxable.

References: [NDAC 4-07-18](#)

Universal Policy Updated: 12/2022

### SECTION 3. TEAM MEMBER APPRECIATION

OMB has adopted an internal team member appreciation program. Posters with team member appreciation tear off forms are available throughout OMB.

Team members, managers, managers, directors, and customers can use the form to "shine the spotlight"

on any team member you see making a positive difference at work.

The completed team member appreciation form is given to the team member who is recognized. The team member can keep the form and/or ask that it be included in his/her personnel file.

Updated: 8/2020

## **CHAPTER 10: TRAINING AND EDUCATIONAL OPPORTUNITIES**

(For definitions used in this chapter, see Chapter 1, Section 4.)

### **SECTION 1. SCOPE OF CHAPTER**

OMB's policy is to provide job-related training to its team members to enhance the knowledge, skills, and abilities of team members and ensure maximum productivity. Team members are encouraged to seek training and pursue educational opportunities as part of their development plan outlined in their performance evaluation to enhance their current skills, increase proficiency, improve performance and job satisfaction, and increase the opportunity for advancement within the division or State service.

Costs of training or educational courses may be paid for or reimbursed as provided in this chapter.

### **SECTION 2. JOB-RELATED TRAINING**

Division directors may, within approved budgetary constraints, plan, schedule, and pay for any job-related training programs appropriate to the work assigned to a regular team member of their division. Training opportunities may include college coursework leading to a degree, special training, or a single course of study intended to assist a team member to perform a task or to enhance job performance.

Division directors will determine which programs are job-related. This determination will be made based on the content of the training program and its value to improving the ability of a team member to perform the job, achieve work plans, or assist the division in achieving stated goals.

All costs related to attendance at approved job-related training programs will be paid by the division in which the team member is assigned or by OMB when appropriate. Travel, lodging, and per diem associated with such training will be paid in accordance with current OMB fiscal and administrative policies.

Training under this section will normally be provided during duty hours. When training or associated travel extends beyond normal duty hours, the overtime provisions of the Fair Labor Standards Act (FLSA) for non-exempt team members must be applied.

### **SECTION 3. TUITION REIMBURSEMENT**

Division directors may, within budgetary constraints, provide reimbursement of tuition and fees to regular team members who attend training or education courses that do not qualify as job-related training in Section 2 of this chapter.

In all cases for which a team member requests tuition reimbursement, the request must be approved by the division director prior to attendance at the course. Approval will be granted only on a course-by-course basis and not on a total program basis, i.e., approval for a single college course, not for a total degree or certification program. Attendance at courses must be during off-duty hours except under unusual circumstances approved by the division director and when a flexible work schedule is not feasible. The

team member cannot receive reimbursement for the same course more than once without the approval from the team member's division director.

A team member must provide written documentation pertaining to the successful completion of the course before tuition reimbursement can be made. Requests for tuition reimbursement will be documented by using [SFN 51372](#), "Request for Tuition Reimbursement." Proof of completion of a college course with a final grade of "C" or higher for undergraduate courses and "B" or higher for graduate courses must be presented with the request for reimbursement. All required attachments must be filed with the completed form.

The rate of reimbursement for courses in Section 3 of this policy may be up to 80 percent of course tuition and fees. Book costs, lodging, per diem, and travel associated with the course are not reimbursable.

Division directors may establish additional parameters for the approval of tuition reimbursement when it becomes necessary to provide an equitable distribution of limited funds such as limiting the reimbursement to less than 80 percent tuition to accommodate more team members. If it is anticipated that requests will exceed budget availability, the division director may reduce the amount awarded each team member or may provide funds based on division priority or needs. Parameters may be flexible from one budget period to another but should be applied consistently and fairly within a budget period.

In instances where an approved agreement for tuition reimbursement is in effect at the time of approval of this policy, the existing agreement will remain in effect until the completion of the course to which the agreement applies.

A team member who resigns or is terminated while attending a course previously approved for reimbursement will not receive reimbursement.

A team member who leaves employment with the State within two years of receiving the tuition must repay the tuition received on a pro-rated basis.

Reference: [NDCC 4-07-36](#)

Updated: 7/2014

## CHAPTER 11 SAFETY AND HEALTH

### SECTION 1. PURPOSE

OMB's policy is to provide a work environment free of hazards that may cause physical harm or illness to team members and customers.

Each OMB team member is responsible for working in a safe and efficient manner and complying with all regulations, standards, and special safety concerns. Failure to adhere to the policy may result in disciplinary action up to and including termination of employment.

Due to each division's unique operations, each division will establish and maintain its own Safe Operating Policies and Procedures as needed and will continually review and update them as conditions warrant. Each division will also develop and maintain its own Continuity of Operations Plan (COOP).

OMB has developed and adopted an Ergonomic Program to educate and train team members on the basic principles of ergonomics and proper body mechanics. See appendix attached to this chapter. Each division is responsible to implement and follow the program guidelines.

#### **Team Member Responsibilities**

- Maintain a clean, orderly, and safe work area that is free from hazards at all times.
- Perform work in a safe manner so as not to jeopardize oneself or others in the workarea.
- Use protective equipment and safe materials.
- Identify and become familiar with the Emergency Plan, Evacuation Procedures, Procedures for Life Safety Threats, and other general safety issues in the event of an emergency.
- Drivers and passengers of motor vehicles must wear seat belts; drivers must act in a safe manner at all times and adhere to speed limits and traffic laws.
- Report immediately to the manager and the Risk Management Division all accidents, injuries, or near-miss incidents that the team member is involved in or has witnessed or any dangerous condition of which the team member becomes aware.
- Complete designated safety training.
- Follow division-specific Safe Operating Policies and Procedures that are relevant to workplace operations.
- Complete Risk Management's training and policy review and acknowledgements annually.

#### **Manager/Supervisor Responsibilities**

- Inform team members of the safest manner in which to perform work and of safety policies.
- Ensure that all team members are provided with current material that addresses the Emergency Plan, Evacuation Procedures, Procedures for Life Safety Threats, and other general safety issues.
- Ensure that all team members receive periodic training in Evacuation Procedures, Procedures for Life Safety Threats, and other general safety issues.
- Ensure that all protective equipment and safe materials are used.
- Enforce all safety and accident prevention policies and procedures.

- Regularly inspect worksites, materials, and equipment to ensure work areas are free of hazards; take immediate corrective action to eliminate hazardous conditions.
- Investigate and report immediately to the division director and the Risk Management Division any accidents, injuries, or near-miss incidents.
- Establish, provide, and enforce division-specific Safe Operating Policies and Procedures that are relevant to workplace operations. Provide training annually and at the time of hire to each team member. OMB's safe operating procedures can be found by logging into OMB'S PeopleSoft Hub and clicking on OMB Safe Operating Procedures.

### **Division Director Responsibilities**

- Abide by manager responsibilities for team members who report directly to the division director.
- Ensure that the Emergency Plan, Evacuation Procedures, Procedures for Life Safety Threats, and other general safety policies and procedures are adhered to and in place.
- Ensure team members are informed of the safest manner in which to perform work and that they use protective equipment and safe materials.
- Ensure a report of any accidents, injuries, or near-miss incidents has been filed with the Risk Management Division.
- Ensure division-specific Safe Operating Policies and Procedures relevant to the division's workplace are established and enforced.

## **SECTION 2. DRIVING WHILE CONDUCTING STATE BUSINESS**

The State of North Dakota, as the employer, requires that all team members who operate a vehicle while conducting state business must adhere to all policies outlined in the current Department of Transportation's [State Fleet Services Policy Manual](#). This applies to all vehicles including State Fleet, privately owned, leased, or rented vehicles.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

Reference: [NDCC 24-02-03.3](#)

Universal Policy Updated: 11/2018

## **SECTION 3. COMMUNICABLE/CONTAGIOUS DISEASES**

OMB realizes that team members with contagious temporary illnesses, such as influenza, colds and other viruses, need to continue with normal life activities, including working. In deciding whether a team member with an apparently short-term contagious illness may continue to work, OMB considers several factors. The team member must be able to perform normal job duties and meet regular performance standards. In the judgment of the manager, the team member's continued presence must pose no risk to the health of the team member, other team members, and customers. If a team member disputes the manager's determination that such a risk exists, the team member must submit a statement from his or her attending health care provider that the team member's continued employment poses no significant risk to the team member, other team members, or customers.



Managers are encouraged to remind team members that OMB provides paid sick leave to cover absences due to contagious temporary illnesses.

OMB's decisions involving persons who have communicable diseases shall be based on current professional medical judgments concerning the disease, the risks of transmitting the illness to others, the symptoms and special circumstances of each individual who has a communicable disease, and a careful weighing of the identified risks and the available alternative for responding to a team member with a communicable disease.

OMB will not discriminate against any job applicant or team member based on the individual having a communicable disease. Applicants and team members shall not be denied access to the workplace solely on the grounds that they have a communicable disease. OMB reserves the right to exclude a person with a communicable disease from the workplace facilities, programs, and functions if the organization finds that, based on a medical determination, such restriction is necessary for the welfare of the person who has the communicable disease and/or the welfare of others within the workplace.

In the event of a declaration of a pandemic by the North Dakota Department of Health, the OMB Continuity of Operations Plan (COOP) will be implemented. The level of implementation will depend on the severity of the pandemic.

## **SECTION 4. CONFIDENTIALITY**

A team member's health condition and medical information are personal and confidential. OMB will take necessary and appropriate action to respect the rights of privacy and confidentiality of any team member. Dissemination of information concerning an individual with a communicable disease will occur as provided under Federal and State law.

Knowledge of a team member's medical condition is restricted in the workplace to:

- Managers and managers to assist them in providing reasonable accommodations.
- First Aid and safety personnel if the disease may require emergency medical treatment.
- Government officials investigating Americans With Disability Act (ADA) or civil rights compliance.

Team members should contact their manager or division director if they have questions or concerns about contagious, infectious illness at work.

The manager or division director should contact Human Resource Management Services (HRMS) or Risk Management if team members have concerns about the possible contagious, infectious nature of an illness. HRMS will consult with appropriate medical resources about the concerns and an appropriate response.

HRMS is available to provide technical assistance regarding reasonable accommodation. See Chapter 3, Section 3, of this OMB policy manual for further information on Americans with Disabilities Act and reasonable accommodation.

## **SECTION 5. EMERGENCY/EVACUATION PROCEDURES**

In the event of an emergency, team members should follow the evacuation procedures for their location. Facility Management has developed a pamphlet entitled “Capitol Complex Procedures to Address Life Safety Threats” to provide state team members with an overview of evacuation procedures. Each floor of the Capitol Tower and area within the Judicial Wing will have assigned coordinators and designated safe areas.

Evacuation procedures for team members at the Century Center have been established by the Risk Management Division. These procedures are available on the PeopleSoft Hub – under OMB Safe Operating Procedures. Team members at State Surplus Property should follow the internal evacuation procedure for that location.

## **SECTION 6. MAIL/PACKAGE HANDLING SAFETY**

All team members who open envelopes and packages will receive training to identify and address suspicious mail. Team members who open mail are allowed to wear gloves and use other protective equipment.

Any package or envelope that contains any unidentified powder, liquid, or item giving off a strong or unpleasant odor should be considered suspicious. The team member should not attempt clean-up of any suspicious material or independently attempt to identify the material. The team member’s division director or manager should be promptly notified. The team member may remove him/herself to an adjacent room but should refrain from moving to other areas until directed to do so by appropriate personnel.

## **SECTION 7. BOMB THREATS**

When a bomb threat is received, the person receiving the call should, to the greatest possible degree, attempt to find out as much information as possible, using the Bomb Threat Report Form ([SFN 51502](#)).

Universal Policy Updated: 12/22

## **SECTION 8. LOSS CONTROL COMMITTEE**

In an effort to prevent accidents and resulting injuries, control costs, reduce liability exposures, and maintain a safe working environment, OMB has established a Loss Control Committee.

Each OMB division director appoints one committee member who shall act as the main contact for the division’s loss control and safety activities. The OMB Loss Control Committee shall meet as needed, but at least annually, to review accidents or incidents involving agency personnel or property and make loss control or other safety recommendations that could prevent similar incidents from occurring in the future. The Loss Control Committee should also facilitate necessary safety and loss control inspections, coordinate building evacuation plans and drills, ensure that first aid kits and safety equipment needs are met, and document the agencies loss control activities.

All communications at a Loss Control Committee meeting involving agency incidents or claims are privileged under [NDCC 32-12.2-12](#) and committee members should not disclose those communications and discussions when they involve claims or incidents that could potentially give rise to liability except as directed by the agency head or legal counsel. Risk Management records including records created by the Loss Control

Committee are privileged and should not be disclosed when the records relate to an incident or claim that could give rise to liability except as directed by the agency head, legal counsel, or the Risk Management Division.

## **SECTION 9. INCIDENT REPORTING**

All team members must ensure all accidents, incidents, and near misses which result, or reasonably could have resulted, in a work injury or third-party claim are reported to the Risk Management Division using the online incident reporting system within 24 hours of the incident. All new team members must receive training on the online Incident Reporting System, and existing team members must annually receive reminders or training on these requirements. More information is available in the Risk Management Website.

All team members must be informed of workers compensation benefits and how to file a claim. If an injured team member wishes to file a workers compensation claim, it will be his/her responsibility to file a First Report of Injury form (SFN 2828), which can be completed electronically at [www.workforcesafety.com](http://www.workforcesafety.com). When a First Report of Injury form is submitted to WSI, a team member will receive a quick reference guide from WSI to assist them with the workers compensation process.

## **SECTION 10. STATE RISK MANAGEMENT DESIGNATED MEDICAL PROVIDER PROGRAM**

The State Risk Management Division (RMD) and Workforce Safety & Insurance administer the State agency workers' compensation account. This allows RMD to designate health care providers to treat workplace injuries and illnesses. These providers can be individuals, clinics, hospitals, or any combination thereof. WSI may not pay for medical treatment by another provider unless a designated provider refers you or you have selected a different physician prior to injury. Emergency care is exempt from the designated provider requirement.

Team members may elect to be treated by a different provider by completing a Designated Medical Provider form available in the PeopleSoft Employee Self Service Portal prior to the occurrence of an injury.

State team members can find more information on Team ND Connect [Designated Medical Provider Program](#).

Universal Policy Updated 9/2020

## **SECTION 11. MODIFIED DUTY/RETURN-TO-WORK**

The State of North Dakota, as the employer, has established a Modified Duty Program that complies with the Americans with Disabilities Act, helps to minimize Workers Compensation costs, and assists team members who are temporarily unable to perform their position's assigned job duties. This policy applies to all team members regardless of status.

The State may, at its sole discretion, provide modified job assignments to injured workers on a temporary basis. Modified assignments under this policy are specially created temporary job assignments and are not

vacant or regular positions within the State's workforce. The availability of such modified assignments depends on the team member's work restrictions and the business needs of the State.

If a modified duty assignment is available, a team member will be permitted to work in a modified duty assignment only after the State receives a written statement from team member's treating health care provider approving the assignment for the injured team member. In general, the State will review the status of the temporary modified duty assignment with the affected team member every 30-90 days, in light of the State's business needs and the team member's condition, to determine if continuation of the assignment is appropriate.

If a modified duty assignment is offered by the employer and approved by the team member's physician, a team member's refusal to accept the offer of modified duty may affect the team member's right to workers' compensation benefits under applicable law.

Modified assignments are not available to team members on an ongoing basis under any circumstances.

The existence of this modified duty policy does not in any way guarantee that modified duty will be available at any given time, or for any particular team member who requests it.

If at any point a team member is medically determined to have sustained permanent restrictions, the creation or continuation of a temporary modified duty assignment will not be considered. In that event, the State will review the team member's situation to determine the appropriate steps to be taken, if any, based on existing State and Federal laws, rules, and policies.

Any team member who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

References: [Americans with Disabilities Act of 1990 \(ADA\)](#) and [ADA Amendments Act of 2008](#)

Universal Policy Updated 6/2023

## **SECTION 12. SAFETY INSPECTIONS**

Each OMB Division will conduct inspections on a regular basis. All staff members will be responsible for reporting and documenting unsafe acts or conditions. Formal inspections will be completed annually. The inspections will be organized by the Risk Management coordinator and will cover the entire operations and facilities.

All safety inspections will be documented with provisions for corrective actions to be taken to remedy any hazards or violations that are found. Completion of corrective actions shall also be documented by recording the remedy and date completed.

## **SECTION 13. SAFE OPERATING PROCEDURES**

OMB is responsible for developing and utilizing safe operating procedures for identified risks associated with job-related activities, materials, equipment, and tools. Each division is responsible for training their team members on the division's unique safe office procedures. OMB's safe operating procedures can be found by logging into OMB'S PeopleSoft Hub and clicking on OMB Safe Operating Procedures. Central

Services and Facility Management have some unique safe operating procedures.

Managers shall ensure that team members at the initial time of hire and annually thereafter review those Safe Operating Procedures that apply to their position. These procedures are intended to provide basic guidelines for safe practices; it cannot be assumed that all necessary warnings and precautions are contained in this document. For further information, consult equipment/machine/other operating manuals or contact your manager.

Updated: 11/2018

## **SECTION 14. OFFICE CLOSURE: INCLEMENT WEATHER AND NON-WEATHER EMERGENCIES**

The State of North Dakota, as the employer, may experience inclement weather or other emergencies that may result in a state office to be closed. Agency leaders may designate key positions that will provide continuing or essential services as required. Team members not in key positions as outlined in [NDAC 4-07-08-04](#), shall report to work as scheduled unless notified otherwise by their agency leadership. Alerts may be sent out regarding office closures, and it is the responsibility of agency leadership to communicate expectations to their team members.

During times that state offices are closed to the public, team members who are authorized and able to work remotely are expected to follow their normal work schedule. Agency leadership will communicate expectations in a timely manner so team members can plan accordingly and transition to remote work as needed. Team members who normally work remotely will continue to work as normal. This will allow state government to maintain services and reduce risk to team members.

If a team member who is authorized to work remotely chooses to adjust their schedule or opts not to work during inclement weather, they must take annual leave. A team member who has been pre-approved for annual leave during an office closure, will be charged leave accordingly. If a team member is released early from work by agency leadership and is unable to work remotely, their pay will not be reduced for hours they were unable to work.

Reference: [NDAC: 4-07-08](#)

Updated: 11/2023

## APPENDIX A: ERGONOMICS PROGRAM

OMB has developed an Ergonomics Program to educate and train team members on the basic principles of ergonomics and proper body mechanics.

Utilizing ergonomic tools and proper body mechanics has been proven to reduce and even eliminate these types of work-related injuries. OMB is dedicated to eliminating cumulative trauma injuries suffered by its team members through ergonomic education, training, and re-engineering work areas. OMB encourages team members to notify their manager of any ergonomic concerns.

All OMB team members and management will be trained at least annually to recognize potentially harmful work practices, and all new team members will be provided training during team member orientation. To ensure a successful program, all team members will actively participate in the program. The training program will include information to help team members:

- Understand proper body mechanics, posture, manual lifting techniques, workstation design, etc. to safely complete their job duties.
- Identify and report physical/environmental discomforts to their manager.

Upon initial hire (within the first week), an initial ergonomic assessment will be completed by the manager or other trained staff member. Any potential areas of concern will be identified and corrected.

### Report Discomfort Immediately

The earlier symptoms are reported the sooner the root cause can be identified and corrected. Early reporting and assessment of symptoms is not only a team member requirement, it is also the best way OMB can help prevent you from experiencing unnecessary discomfort and pain.

Updated: 11/2018

## CHAPTER 12 PERFORMANCE EVALUATION

The State of North Dakota, as the employer, conducts performance evaluations with team members to ensure team members are adequately performing the assigned job duties and to provide a basis for team member development discussions and salary administration actions.

The performance evaluation process is an ongoing discussion between a team member and the direct manager to establish a clear understanding regarding:

- essential job functions of the position;
- how the team member's job contributes to the objectives of the division/agency/state;
- how the team member and manager will work together to sustain, improve, or build on existing team member performance;
- how job performance will be measured;
- identification and removal of barriers; and
- identify a development plan to learn and grow.

All non-probationary classified state team members will have a performance evaluation completed at least annually.

### Annual Timeline

- **July – September:** Priorities are set within the agency. Job descriptions are reviewed to ensure the information is current. Team members complete their key goals, outcomes, and development planned for the next 12 months. The manager and team member review the information together.
- **October – March:** Manager meets with the team member to discuss career aspirations, associated development plan, as well as a check-in on performance. This discussion should be documented as part of the performance appraisal.
- **April – June:** Manager schedules a discussion with team member concerning accomplishments, outcomes, and development achieved throughout the past year. Team member completes the self-evaluation, and the manager completes their portion of the form. Annual performance evaluations completed serve as basis for salary administration. Agencies will establish internal deadlines for completion in accordance with the annual statutory requirement but no later than June 30.

A team member receiving an overall needs improvement rating must be placed on a performance improvement plan.

A probationary status team member will receive a performance evaluation at the end of the probationary period. The agency may extend the initial period of probation for up to six months if the team member is not meeting performance standards. The agency must notify the probationary team member in writing of the decision to extend, the reason for extension, and the length of the extension. The agency must notify the team member within fifteen (15) working days of completion of the probationary period of the agency's decision to extend the probationary period. Alternatively, a probationary team member who is not meeting performance standards may be separated from employment at will if they do not successfully complete the initial probationary period or the extended probationary period.

If a team member's manager changes during the evaluation cycle, both managers share responsibility for the yearly evaluation. It is the responsibility of the new manager to assure the performance evaluation is completed within the required timeline, and it is the responsibility of the former manager to provide

feedback for the appropriate portion of the evaluation.

Performance evaluations are not grievable beyond the next level manager unless the evaluation is combined with a demotion, dismissal, reduction in pay, or if the team member alleges discrimination or retaliation in the evaluation. Such allegations are grievable through the grievance process of the employing agency.

Reference: [NDAC 4-07-10](#)

Universal Policy Updated: 11/2019



## CHAPTER 13 DISCIPLINE

The State of North Dakota, as the employer, believes reasonable rules of employee conduct and performance standards are necessary. Rule violations and performance deficiencies are grounds for disciplinary action up to and including termination.

State agencies who employ individuals in positions classified by human resource management services follow a system of progressive discipline unless an infraction or a violation of a serious nature is committed, including insubordination, theft, falsification of pay records, or assaulting or threatening to harm a manager or team member, patient, or client and for which the imposition of less severe disciplinary action would be inappropriate.

The progressive discipline system is intended to correct a regular team member's behavior by beginning with a less severe appropriate action and progressing to a more severe appropriate action, for repeated instances of poor job performance or for repeated violations of the same or similar rules or standards. Progressive discipline includes verbal warnings, written warnings, suspension (paid or unpaid), demotion, and dismissal.

Written warnings and notices of suspension (paid or unpaid), demotion, and dismissal must be coordinated with the agency's Human Resources department. A copy must be submitted to the team member, and the original copy retained in the team member's personnel file. All disciplinary documentation placed in a team member's personnel file must be reviewed and signed by the team member and must inform the team member they have the opportunity to respond to any materials filed in their personnel file. If the team member refuses to sign the copy to be filed, the agency head or the agency head's designated representative shall indicate on the copy to be filed that the team member was shown the material, was requested to sign the material to verify that the material had been read, and that the team member refused to sign the copy to be filed. In the presence of the team member and a witness, the agency head or the agency head's designated representative shall sign and date a statement verifying the refusal of the team member to sign the copy to be filed.

### **Discipline of Regular Classified Employees**

A team member who has completed the probationary period may be disciplined only for cause. Progressive discipline shall be used to correct a regular classified employee's job performance or for a violation of rules or standards, unless the infraction or violation is of a serious nature as described above and for which the imposition of a less severe disciplinary action would be inappropriate.

### **Verbal Warning**

A verbal warning is intended to change behavior or influence a team member toward improved performance. The verbal warning shall describe the problem, how the behavior or poor performance is detrimental to the discipline and efficiency of the service in which the team member is or was engaged, the performance or behavior expectations going forward, and the consequences if the performance, behavior, or misconduct continues. Verbal warnings must be documented in the manager's notes or records. A copy of the verbal warning shall be given to the team member and agency Human Resources.

**Written Warning**

A written warning may be appropriate when a pattern of unacceptable performance is recognized or misconduct has occurred. A written warning typically follows, but is not required, after a verbal warning has been given.

The written warning shall contain the same elements as the verbal warning detailed above, in the form of a letter, memo, or official agency form, and signed by the manager and team member. The written warning must be placed in the team member's personnel file and a copy must be given to the team member.

**Pre-Action Notice**

An appointing authority shall provide a written pre-action notice when the suspension without pay, demotion, or dismissal of a regular team member is being considered.

The written pre-action notice must include:

- a. A statement that the appointing authority believes there is cause to take disciplinary action that may result in demotion, suspension without pay, or dismissal of the team member.
- b. An explanation of the allegations against the team member.
- c. A provision for the team member to respond in writing within a minimum of five working days.
- d. A statement regarding the team member's status until a final decision is made.
- e. A statement that a written notice of the final action taken will be provided to the team member.

The appointing authority and agency Human Resources shall determine the method of delivery that best guarantees the team member's receipt of the pre-action notice.

The team member will be given access to his or her official personnel file and all information upon which the allegations are based. The employer should include as attachments any documents or information upon which the pre-action is based or which support the employer's belief there is cause to take disciplinary action. The team member's response must be in writing and received on or before the time set forth.

**Final Action Notice**

The team member must be notified, in writing, of the final action to be taken. The final action notice must include either of the following:

- a. If the final action is less than demotion, suspension without pay, or dismissal, a statement must be made explaining the reasons for reducing the intended disciplinary actions. Any stipulations that may apply to continued employment must also be stated.
- b. If the final action taken demotes, suspends, or dismisses the team member, a detailed explanation of the basis for the action must be provided. This notice must also inform the employee of the right to appeal the decision in accordance with the provisions of [North Dakota Administrative Code § 4-07-20.1-03.](#)

The appointing authority and agency Human Resources shall determine the method of delivery that best guarantees the team member's receipt of the final action notice.

### **Suspension of Employment With or Without Pay**

The Agency Director or designee, with the coordination of agency Human Resources, must determine if the suspension is with or without pay and the length of the suspension. The suspension must be consistent in severity with the seriousness of the team member's poor performance or misconduct. A suspension of employment action must follow the pre-action notice procedure as set forth above. A suspension without pay may not exceed 30 calendar days. If the suspended team member is exempt from the overtime provisions of the Fair Labor Standards Act, the appointing authority may make deductions from pay for unpaid disciplinary suspensions of one or more full days.

The written final notice given to the team member will include an explanation containing the elements described in the pre-action procedure. Agency Human Resources must review all suspensions prior to implementation.

### **Demotion**

A team member may be demoted for inefficiency, misconduct or other cause. A demotion may be to a lower classification, a lower salary grade, or both. The Agency Director or designee will give the team member written notice of the demotion following the pre-action procedure and an explanation of the appeal process.

### **Dismissal from Employment**

This is the most severe disciplinary action and is intended as a final action. This level of discipline will normally be taken when previous disciplinary actions have been ineffective or severe misconduct. Dismissal from employment may be used earlier in the disciplinary process when it is necessary and consistent with the performance and misconduct.

The written notice given to the team member will include an explanation containing the elements described in the pre-action procedure.

Reference: [NDAC 4-07-19-02](#)

Universal Policy Updated: 1/2020

## CHAPTER 14: GRIEVANCE COMPLAINTS - FILING AND APPEAL PROCEDURES

(Complaints, Employer Actions, Classification Actions, Discrimination)

### GRIEVANCE PROCEDURE

(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. The [pdf version](#) of this document can be downloaded for agency personalization.)

### SECTION 1. SCOPE OF CHAPTER

#### INTRODUCTION

The State of North Dakota, as the employer, provides a means for team members to have their complaints or grievances heard and resolved at the level of supervision most directly associated with the team member'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 team member 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 team member to grieve an employer action does not create a property interest in employment.

#### TEAM MEMBER RESPONSIBILITIES

Team members 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, a team member may first consult with agency Human Resources or HRMS.

A team member may be assisted by a representative of his or her choosing at any point in the process.

#### EMPLOYER RESPONSIBILITIES

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

Throughout the grievance procedure, it is the responsibility of the employer to respond to the issues raised in the team member complaint or grievance. Retaliation against a team member 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 team members 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. A team member 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 team member that will prevent compliance with the time limitations. Time limitations may be extended for team members 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 team member without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment.

Eligible Team members:

- a. A regular team member is given a formal opportunity to respond prior to a decision to dismiss, demote, or suspend the team member without pay. Following the final decision in the pre-action process, the team member may grieve the decision through the internal grievance process. A regular team member may appeal the Agency Director's or designee's decision as outlined in step three of this section.
- b. A team member in probationary status may grieve a decision to dismiss, demote, or suspend the team member without pay through the internal grievance process. A probationary team member 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 a team member in probationary status.
- c. A non-classified team member may grieve a decision to dismiss, demote, or suspend the employee without pay through the internal grievance procedure. Grievances and appeals from non-classified team members 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 team member.

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

Failure on the part of the team member 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 team member 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 team member must also provide a copy of the grievance to the person who made the decision being grieved. The team member should file the written grievance using Team member Grievance form ([SFN 18409](#)).

Failure to begin the procedure within the time limitations may cause the team member 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 team member 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 team member 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 team member 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:**

The team member, 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 [NDAC 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 team member 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 team member 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 team member's manager. The team member may also contact HRMS for assistance with the issue. If needed, a workplace investigation may be conducted within 30 days.

#### **Step One:**

A team member who has a complaint should first discuss it with their immediate manager. If discussion and any subsequent action taken by the manager fails to effectively resolve the complaint, the team member may file a written grievance with the immediate manager within five (5) working days of the incident or grievable action, or within five (5) working days after informal discussion with the immediate manager has failed to resolve the grievance. The team member should file the written grievance using Employee Grievance form ([SFN 18409](#)).

The manager, 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 team member.

#### **Step Two:**

The team member, 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 team member'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 manager's response or within five (5) working days following the manager'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 manager's response. The date of service of notice is 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 team member's manager of the receipt of the complaint, properly review the issue, and give a written response to the team member within 10 working days of receipt of the grievance from the team member.

### **Step Three:**

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

The team member, 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 team member must file the grievance with the Agency Director or designee within five (5) working days from the date the team member 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 team member's (Insert Agency Title) of receipt of the grievance, properly review the issue, and give a final written response to the team member within 15 working days of receipt of the complaint from the team member. 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 team member 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 team member 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 team member'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 team member and the Agency Director or designee agree, in writing, to waive the procedure. Upon obtaining the waiver, the team member may appeal directly to HRMS in accordance with N.D Admin Code [4-07-20.1-08](#).

The team member'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 team member must use Team Member Request for Waiver of Internal Agency Grievance Procedure form ([SFN 53730](#)). The Director or designee and the team member must sign form [SFN 53730](#) within 15 working days from the date of the employer action. If the waiver is approved, the team member 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 team member 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 team member 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 team member 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 [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 5. 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 manager unless the performance results in demotion, dismissal, or other loss of benefits or pay; or the team member alleges discrimination or reprisal in the review. Alleged discrimination or reprisal may be grievable using the agency's internal grievance procedure.

## **SECTION 6. DISCRIMINATION GRIEVANCE PROCEDURE FOR APPLICANTS**

The State has established a grievance procedure for applicants for positions in state government and team member 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](#).

## **PROCEDURE FOR TEAM MEMBERS WHO ARE APPLICANTS**

For team members 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 7. REPRISAL**

### **DEFINITION**

"Reprisal" means an unfavorable employment-related action taken against an applicant or team member by

an appointing authority for appealing to HRMS or the State Personnel Board; for exercising the team member'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 team member 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.

Reprisal against an team member 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 team member who retaliates against another team member 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.

A team member who has a complaint of reprisal by anyone at work, including any manager, coworker, or the public, must report such conduct to his or her manager immediately. If the complaint involves the team member's manager, or if the team member for any reason is uncomfortable reporting to the immediate manager, the team member must report the incident directly to a **(Insert Agency Title)** or the Agency Director. The team member 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 4-07-20.2](#).

Universal Policy Updated: 6/2023

## CHAPTER 15 SEPARATION AND REEMPLOYMENT

### SECTION 1. SEPARATION

The State of North Dakota, as the employer, strives to ensure that team member separations, including resignations, retirements, and dismissals, are handled in a professional manner with minimal disruption to the workplace.

Team members are expected to notify their manager, in writing, of their intent to resign or retire. Team members are expected to inform managers of their plans or intent to resign or retire a minimum of two weeks in advance of their final day of employment or as early as possible to facilitate replacement planning and training.

The manager will notify the Human Resource department by sending a copy of the resignation or retirement letter and any other pertinent information. The manager should also encourage the team member to contact appropriate resources such as the North Dakota Public Employees Retirement System (NDPERS) and Human Resources as soon as possible.

Agency director (or designee) has final authority to modify separation date.

#### **Dismissal:**

Managers must consult Human Resources prior to taking any action related to the dismissal of a team member. There are many considerations connected with dismissal, also known as "discharge," of a team member. The Universal Discipline policy discusses this in greater detail.

Veterans have additional appeal rights over non-veteran probationary team members. Veterans may request a hearing pursuant to the veteran's preference law.

#### **Communications and Property:**

When a team member separates from employment, all agency property must be returned, including but not limited to computers, laptops, monitors, books, furniture, headphones, work related documents, building keys, magnetic access cards, state identification, and credit cards.

#### **Benefits:**

The team member's basic life insurance and health insurance premiums will be paid by the State one month beyond the month of last date of employment. The team member may elect COBRA continuation for their health, dental, and vision insurances. Life insurance is eligible for conversion from the group plan to an individual policy. The team member should visit the NDPERS website ([ndpers.nd.gov](http://ndpers.nd.gov)) for more information regarding the status of benefits upon separating employment.

#### **Final Pay:**

Team members separating employment will be paid through the last day identified in the notification letter. If the team members receive a monthly salary, it will be prorated for the month. The wage payment will be made on the next regular payroll for the team member. Payment of unused annual leave, applicable sick leave and compensatory hours will be made on the supplemental payroll, which falls on or about the 10th of the month following the month of leaving employment (supplemental payroll).

**Transfer to Another State Agency:**

A team member who transfers between agencies with time off between the date the team member leaves a position and the date the team member begins employment in the new position must take annual leave or leave without pay in order to avoid a break in service. The team member who transfers to a different state agency, must make arrangements for leave with the exiting and receiving agency prior to the effective date of the transfer.

Universal Policy Updated: 2/2023

**SECTION 2. TEAM MEMBER EXIT INTERVIEW**

Managers should conduct exit interviews with team members who are terminating their employment with the agency. The purpose of an exit interview is to determine what motivated the team member to resign and, if possible, correct the situation. When a team member is resigning for personal or health reasons, the possibility of a family medical leave should be explored. Exit interviews of involuntarily dismissed team members may be waived.

Since team member resignations or terminations may indicate the need for improvement in some aspect of the business, exit interviews should determine:

- The reason why the team member is leaving in an effort to retain other team members with satisfactory job performance and reduce turnover.
- Any complaint the team member may have regarding unit/agency policy or conditions so that corrective action can be taken if possible, and communication practices within the agency enhanced.
- Any difficulties the team member may have had regarding the team member's job or supervision received so that corrective action can be identified which will result in better selection, placement, and training of other staff.

The exit interview also affords management an opportunity to discuss with terminating team member's terms and conditions relative to final pay, reemployment, unemployment compensation and other matters relating to separation from employment.

**SECTION 3. EMPLOYMENT TERMINATION QUESTIONNAIRE**

The Employment Termination Questionnaire, SFN 58740, can be obtained from HRMS. The questionnaire should be given to the team member on or before termination and returned to HRMS as soon as possible.

Completion of the questionnaire by team members is optional but should be encouraged.

**SECTION 4. INFORMAL ASSISTANCE FOR TEAM MEMBERS**

OMB team members are encouraged to consult informally with the division director, the OMB director or HRMS before deciding to resign. HRMS is available to discuss team member complaints, problems, frustrations, feelings of inequity or injustice, or other employment-related concerns.

## SECTION 5. RESIGNATION

Team members are expected to notify their manager of their intent to resign a minimum of two weeks in advance of the final day of employment. Team members are encouraged to consider informing managers of their plans or intent to resign as early as possible to facilitate orderly replacement planning and training.

Managers shall notify OMB payroll and prepare a current final job performance evaluation.

OMB will accept resignations of team members at any time. Team members are encouraged to submit their resignation in writing. The division director has the authority to modify the resignation date in an effort to manage budget dollars. Resignation dates incorporating annual leave will be evaluated, but the division director has the right to approve or disapprove such requests.

## SECTION 6. DISMISSAL

This section is a general discussion of considerations connected with termination of employment also known as "dismissal" or "discharge," of a team member. It is intended to be used together with Chapter 13 regarding dismissal as a form of discipline. Managers must consult Chapter 13 prior to taking any action related to the dismissal of a team member.

Dismissals must be fully and clearly documented. The principal reference documents regarding dismissals are generally the job performance evaluation form(s) and the pre-action letter. Additional material, such as documents regarding other discipline, pre-action letter(s), statements made by the manager, other managers, other team members, consumers of services, the team member, other agencies, and examples or statements describing quality and quantity of work may also be necessary or advisable.

Regular classified team members are entitled to a written pre-action notice before the decision is made to dismiss the team member. (See Chapter 13 of this manual.)

The manager must inform the team member of the appeal process. (See chapter 14 of this manual.)

HRMS is available to the team member and to the manager upon request to explain OMB policies and procedures and other applicable statutes and rules regarding discipline and/or dismissal.

## SECTION 7. RETIREMENT

When notified of a retirement by the team member, managers should encourage the team member to contact appropriate resources such as the Public Team members Retirement System as soon as possible to plan for a successful retirement.

Managers may also consider making available local training courses or seminars specifically intended for team members planning to retire. If funds permit, the agency may pay the fees and authorize administrative leave to attend such training. Requests for such training should be processed as any other kind of training requests within the appropriate division budget.

## **SECTION 8. REDUCTION-IN-FORCE (RIF) ([NDAC 4-07-11, 4-02-20.1](#))**

The decisions of OMB regarding where and how its resources, including its team members, will be assigned are necessarily management decisions. Decisions on reduction-in-force are made in the context of overall budget cuts and reallocation of work.

The RIF policy will be initiated when it has been determined by a division director, with concurrence of the OMB director, that a reduction-in-force is necessary in a designated division(s) or work unit(s) of a division(s) because of a reduction in funding, lack of work, curtailment of work, or because of reorganization.

When a reduction-in-force is necessary, the director of the designated division or work unit(s), with concurrence of the OMB director, will:

- Determine the division or work unit to be affected by the reduction-in-force.
- Determine the number of positions to be reduced and the classification(s) affected.
- Review vacant positions within the designated division or work unit and within the designated classification(s) for possible elimination.
- Reduce temporary team members performing the same or similar work in the designated division or work unit.
- Reduce probationary team members in positions assigned the same classification(s) as those designated for reduction in the designated division or work unit.
- Conduct a written reduction-in-force analysis if more than one regular team member occupies positions in the designated division or work unit with the same classification targeted to be reduced. If a position to be eliminated is the only position in the division or work unit assigned a single classification, no reduction-in-force analysis is necessary, but this fact must be documented. A reduction-in-force analysis must show a comparison of the team members' knowledge, skills, length of classified service, other experience, and level of performance with the knowledge, skills, and experience determined necessary to accomplish the work to be done following the reduction-in-force. The analysis and related documentation must be maintained according to the applicable records retention schedule. ([SFN 17168](#), Reduction-In-Force Analysis Worksheet)
- Reduce regular team members in positions selected for reduction through the analysis, providing to affected team members, in person, a written notification of at least two weeks. More time is desirable when possible. If notification cannot be delivered in person, a certified letter must be sent to the last known address of the team member. Written notification must include the reason(s) for the reduction-in-force, notice of grievance and appeal procedures as found in Chapter 14 of this manual, and outplacement services available to the team member.
- Place a copy of the written notification in the personnel file and ensure that the termination of employment is recorded as a reduction-in-force for payroll purposes.

No regular team member may be separated from employment due to a reduction-in-force when there are temporary team members in the designated division or work unit performing the same or similar work or when there are probationary team members with the same job classification in the designated division or work unit.

A reduction-in-force may not be used as a substitute for addressing disciplinary issues and must be made in a nondiscriminatory manner in accordance with [NDCC 14-02.4-01](#) and any Federal civil rights laws.



A team member who was in a classified position that was reduced has the right to file a grievance or appeal in accordance with [NDAC 4-07-20.1-07](#) on the basis that OMB did not utilize a uniform comparative analysis as required by [NDAC 4-07-11-03](#) or that the reduction-in-force was conducted in a discriminatory manner. For grievance and appeal procedures, see Chapter 14 of this manual.

Approval by the OMB director is required before a position that has been included in a reduction-in-force can be filled.

The division director shall determine any outplacement services and the extent of those services made available to team members who lose employment due to a reduction-in-force. Such services should be provided within a reasonable time period prior to and/or following termination of employment and may take the form of the following:

- Assistance in preparing, typing, copying, and mailing resumes.
- Typing, copying, and mailing employment applications.
- Excused leave for job interviews.
- Use of phone services.
- Referrals to other employers.
- Services from ND Job Service, Public Team members Retirement System, HRMS, and resources available to help the unemployed.

## **SECTION 9. REEMPLOYMENT FOLLOWING A REDUCTION-IN-FORCE**

An individual who has lost employment due to a reduction-in-force within OMB shall be considered an internal applicant for all positions within OMB for which the individual applies and shall be offered reemployment with OMB if all of the following conditions are present:

- A regular position vacancy in the same classification or a lower classification in the same series occurred and the vacancy will be filled by someone other than a current team member.
- The individual meets the qualifications determined by OMB to be necessary for successful performance of the position and successfully completes any required examinations specified by OMB including an oral interview(s).
- No more than one year has lapsed since the individual lost employment due to reduction-in-force.
- The individual is not currently employed in a regular position in State service.

An individual who has lost employment due to a reduction-in-force and was denied reemployment has the right to file a grievance or appeal in accordance with [NDAC 4-07-20.1-07](#) only on the basis that OMB did not follow [NDAC 4-07-11-07](#) or that the denial of reemployment was conducted in a discriminatory manner. The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with OMB. For grievance and appeal procedures, see Chapter 14 of this manual.

Updated: 7/2015



## CHAPTER 16: USE OF ELECTRONIC COMMUNICATION DEVICES

The State of North Dakota provides Electronic Communication Devices (ECDs) and an information technology (IT) infrastructure designed to facilitate business communications among state government, educational entities, political subdivisions, and their business contacts. These devices include telephones (cell phones and smartphones), multi-function printers, tablets, mobile computing devices, workstations, video equipment, all computer and network-related hardware, software (including e-mail, Internet, instant messaging, blogging), and/or peripheral devices. Devices connected to the state's IT infrastructure must not damage the reputation of the State of North Dakota or jeopardize the systems' integrity.

This policy applies to both state-owned devices or team member-owned devices that are synced or directly attached to the State IT network infrastructure. Unless exempted by law, all electronic communications shall follow North Dakota's Open Records Law. The State of North Dakota ECDs is not part of any team member benefit program.

### **Use of Electronic Communication Devices:**

The team member's agency will provide required devices (such as a desktop or laptop computer) and is responsible for the maintenance and replacement of such devices. In addition to a laptop or desktop computer, some positions may require the use of mobile computing devices such as cell phones, smartphones, or tablets.

The agency is responsible for determining if a state-owned mobile computing device should be provided or allowed to sync or directly attach to a personal mobile computing device to the state's IT infrastructure. Each situation should be considered individually and be based on the team member's work or position.

All electronic communications are subject to North Dakota's Open Records Law, [NDCC 44-04-18](#).

### **Authorized Use:**

It is the state's policy to limit the use of state ECDs to official business. However, users may be permitted to utilize ECDs for personal use (personal use does not constitute time worked), off-duty, and if in compliance with the following terms of this policy:

- Does not interfere with the performance of the user's public duties.
- Is of nominal cost or value.
- Does not create the appearance of impropriety.
- Is not for a political or personal commercial purpose.
- Is reasonable in time, duration, and frequency.
- Makes minimal use of hardware, software, and network resources.
- Uses only software that has been licensed by the Agency. Unauthorized downloading of software/shareware is prohibited; ECD's may be audited at any time.

### **Standards of Conduct:**

Users shall be held personally liable (legally, financially, or otherwise) for the use of ECDs not in compliance with state policy. ECDs should be used professionally and ethically as noted below:

- Must not use ECD's to probe or hack.
- Must not use ECDs to distribute or access content that is harassing, bullying, discriminatory, defamatory, insulting, sexually explicit, offensive, or erotic.

- Must not create, distribute, copy, store, or knowingly use unauthorized copies of copyrighted material on State of North Dakota computers or transmit them over the state's networks.
- Must limit the use of non-business related "streaming", audio and video (which includes Internet radio, stock/news tickers, video streaming, etc.) that use significant amounts of the State's bandwidth.
- Must not use ECD's with photo/video/audio capability in restricted-access areas and areas where personal privacy would be expected (e.g., restrooms) or electronically transmit images, video, or audio recorded on such devices without permission.
- Must not use ECDs for any illegal activity, gambling, or trading in illegal substances, etc.
- Must not use ECDs to knowingly download a copy, distribute, store, or use pirated software or data.
- Must not create or distribute a virus or intentionally cause damage to any ECDs or bypass any state virus detection system in place.
- Must report a lost or stolen ECD immediately.
- Must immediately report suspicious activity or unauthorized access of an ECD.
- Must protect the ECD from theft, damage, abuse, or unauthorized use.
- When a team member terminates employment, work data and applications will be wiped from the device.
- The state reserves the right to block out any Internet sites deemed by the state to be unrelated to the state's responsibilities.

### **Supported Cellular Devices**

The devices that are fully supported and managed by NDIT are iPhone Devices via the supported Mobile Device Management (MDM) solution. Support is limited to:

- MDM and associated applications and content.
- Voice services from the base device along with voice applications allowing for connectivity to the enterprise voice solution.
- Applications procured by NDIT.

Any device that has been "rooted" or modified from a factory default installation is not allowed access to any state system or data. Support of team member-owned devices is limited to the best effort and will not perform support that requires interaction with the team member's service provider.

### **Email Use**

Caution should be exercised when communicating via email. This guidance applies to all ECDs:

- Email messages and attachments are not encrypted and are therefore vulnerable to interception by persons with malicious intent.
- All email messages including personal email messages are the property of The State of North Dakota and may be examined if deemed necessary.
- Email users will not permit unauthorized individuals to access their State of North Dakota email account.
- Email users should exercise caution when receiving unsolicited email messages or attachments.
- Accessing external email accounts on State issued ECDs is not permitted.

### **ECD Cloud Storage**

The State of North Dakota has set forth the following requirements for syncing files and later accessing them from a web browser or mobile device:

- Team members must use OneDrive for Business as a mobility solution for work data. Other cloud storage solutions are not allowed.
- Files may only be synced via OneDrive for Business to work-managed devices, such as work laptops, work cell phones and personal cell phones managed with Mobile Device Management (MDM).
- Syncing work and/or personal files from a work laptop to any other cloud storage provider is not allowed.
- Cell phone backup solutions such as iCloud can be used to backup contacts, pictures, app data, etc. Work email and work documents should not be synced to these solutions.

### **Additional Responsibilities of Team Members Using Personally Owned ECDs**

The owner of a personally owned ECD is responsible for ensuring that the device is protected, has antivirus software installed, enabled, and that the antivirus software remains updated. The State of North Dakota is not responsible for providing antivirus software for personally owned ECDs.

The owner of a personally owned ECD is responsible for ensuring that the latest operating system updates are applied, including all applicable security patches. The State of North Dakota is not responsible for maintaining, supporting, protecting, replacing, or repairing personally owned ECDs or for any loss of data.

### **Social Media**

It is the State of North Dakota's policy that all official communications made through official agency social media accounts, on behalf of or concerning the agency, must be made through or with the permission of the Public Information Team or Public Information Officer (PIO) or PIO designee.

All State information technology ("IT") resources are the sole property of the agency, and all applicable statutes, policies, and guidelines govern their usage, which is subject to monitoring.

Social media content on the agency's official social media accounts will be retained for the required period of time in accordance with the State of North Dakota's Records Retention Schedule for Electronic Communications (450102), if applicable.

### **Employee Usage**

All employees are representatives of the agency and the State of North Dakota and should exercise good judgment in the use of social media. Team members should remember that their actions have the potential to impact their employment including subjecting them to disciplinary action up to and including termination from employment.

Team members must not speak or purport to speak on behalf of the agency unless it is a part of their job duties, or they are required to do so by request of their employer. Team members must not engage in conduct that would create the impression that the team member speaks on behalf of the agency.

Team members using a State IT resource to access personal accounts have no expectation of privacy or confidentiality. Team members must not access non-work-related sites during scheduled work times unless doing so is a part of the employee's job duties. Team members may access these sites during recognized lunch or break times. Accessing personal accounts on State owned equipment during an employee's break times is a privilege subject to revocation or modification.

Information exchanged over social media, including on personal accounts or platforms, may be subject to the State's open records laws, and may be used in legal proceedings involving the agency or the team member.

### **Monitoring**

The State of North Dakota reserves the right to monitor the use of the network, systems, and devices at any time without advance notice for business purposes, including but not limited to reviewing, storing, accessing, auditing, and intercepting information received or sent through e-mail, texting, instant messaging, voice mail, or over the Internet. Therefore, no user should expect any privacy except that which is provided by law, even though a private password or other private access code to log in may be provided. The State will disclose records to law enforcement, management, government officials, or third parties through a subpoena or other process. Consequently, team members should always ensure that their communications are accurate, appropriate, and lawful.

To prevent the abuse of monitoring capabilities, approval must be provided by the Human Resource Department to view any system logs on a specific employee.

### **OMB Addendum to Electronic Communication Devices Policy:**

Any photo used as a team member profile picture in applications used for OMB business, including Microsoft Teams and other applications, must be a photo taken or provided by OMB for business purposes.

### **Publishing Cellular Numbers**

[Fiscal and Administrative Policy 514](#) addresses the publishing of cellular numbers.

### **Device Usage and Compatibility**

[Fiscal and Administrative Policy 514](#) addresses device usage and compatibility.

### **Non- Compliance Measures**

A user's violation of state policy may lead to disciplinary actions, and up to and including termination of employment, and/or service.

### **Reimbursement of Employee-Owned Cellular Device Costs**

[Fiscal and Administrative Policy 514](#) addresses personal telephone/cellular device expenses.

Universal policy Updated 1/2024

## CHAPTER 17 TELEWORKING POLICY

### SECTION 1. OBJECTIVE

Teleworking allows team members to work at home, on the road or in a satellite location for all or part of their work week. Teleworking is a major component of The New Workplace. Teleworking does not change the terms and conditions of employment with the State of North Dakota. Additional information can be found at [The New Workplace - Teleworking](#).

### SECTION 2. THE NEW WORKPLACE

With the goals of maximizing team member flexibility and the use of off-site work locations, agency directors will work with their managers and individual team members to determine which positions would be required to work full-time or part-time in an on-site location.

#### Primary Work Locations

Primary work locations for state team members may be exclusively in-office, exclusively from home, or some agreed upon combination:

- **Home:** Work is performed on average three (3) or more days per week at home.
- **State Facility:** Work is done exclusively from a state facility
- **Hybrid:** Work is performed on average of three (3) or more days per week at a state facility.
- **Mobile/On the Go:** Work is performed on mobile devices or in the community/district and on the move. The workplace may change frequently.

Updated: 9/2022

### SECTION 3. EQUIPMENT

State agencies will supply necessary equipment for the team member. State policies relating to computer hardware and software usage applies in the teleworking arrangement unless otherwise specifically authorized by the agency director or designee.

- The team member will be allowed to use the specified equipment in the Teleworking Agreement Addendum which will be provided by the Agency.
- Any State-owned equipment remains the property of the Agency and will be returned to the Agency at termination of the Teleworking Agreement.
- The Agency will supply materials necessary to complete assigned work at the work site through the team member's in-office visits. Team members will not be reimbursed for office supplies available through the agency.
- Necessary high-speed internet connection (Cable or DSL equivalent) will be provided by the team member for the duration of the teleworking agreement.
- Any additional or specific equipment requirements in terms of equipment will be considered by the agency on a case-by-case basis.
- Phone calls placed on behalf of the state may be placed through an approved state of North Dakota softphone or calling technology.

### SECTION 4. SECURITY

Consistent with the organization's expectations of information security for team members working at the office, telecommuting team members will be expected to ensure the protection of confidential materials

and customer information accessible from their home office. Steps include the use of locked file cabinets and desks, regular password maintenance, and any other measures appropriate for the job and the environment.

## SECTION 6. SAFETY

Team members are expected to maintain their home workspace in a safe manner, free from safety hazards. Workers' compensation coverage will be provided for the team member while in the teleworking arrangement. However, the state otherwise assumes no liability for injuries occurring to the team member in their home. The team member may not allow members of the public, vendors, or clients into their personal residence to conduct public business and is responsible for and assumes any liability for any injuries sustained by visitors to his or her work site. The team member must immediately report any accident or injury to the supervisor or designated staff member.

Teleworking team members need to follow the same agency requirements for a safe work environment with proper ergonomics.

## SECTION 7. TIME WORKED

Telecommuting team members who are covered by the overtime requirements of the [Fair Labor Standards Act](#) will be required to accurately record all hours worked using the appropriate system used by their agency. Hours worked more than those scheduled per day and per workweek require the advance approval of the telecommuter's manager. Failure to comply with this requirement may result in disciplinary action.

## SECTION 8. OTHER ITEMS

- Inclement Weather: If the customary work site is closed due to an emergency or inclement weather, the team member will continue to work from their remote location. If there is inclement weather or an emergency, at the remote location, the team member will notify their manager. Team members who are teleworking part-time will be expected to work off-site when the office is closed.
- Travel: Business travel is reimbursable at travel and per diem rates set forth in state fiscal policy.
- Childcare/Eldercare: Teleworking is not designed to be a replacement for appropriate childcare or eldercare. Although an individual team member's schedule may be modified to accommodate childcare or eldercare needs, the focus of the arrangement must remain on job performance and meeting business demands. Teleworking team members are encouraged to discuss expectations of teleworking with members of their household.
- [Teleworking Guidance](#)

## SECTION 9. TELEWORKING AS AN ACCOMMODATION

When requested by a team member, teleworking may be considered as a reasonable accommodation under the Americans with Disabilities Act. "Reasonable accommodation" is any change in the work environment or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job, or gain equal access to the benefits and privileges of a job as long as the accommodation does not cause undue hardship to the agency. The agency director or designee shall

initiate an interactive process with the team member to determine the type of accommodation needed. To determine if any or all of a job can be performed at home, the manager must ensure that essential functions of the position have been identified and consideration given to the feasibility of teleworking on a full-time, part-time, or intermittent basis. The division director may waive certain teleworking eligibility requirements, modify the teleworking policy, or waive or modify other workplace policies to allow a team member with a disability to work from home as a means of reasonable accommodation. Team members will not be able to telework, as an accommodation, if it prevents the team member from performing the essential functions of the job or causes undue hardship to the agency.

The agency director has the right to select the most effective accommodation even if it is not the one preferred by the team member. For additional information, see [Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act.](#)

Universal Policy Updated: 6/2023

## CHAPTER 18 INFANTS AT WORK

The State of North Dakota, as the employer, understands the relationship between newborns and their parents and has adopted an infant at work policy. Regular and temporary team members may request to care for their infant child by birth, adoption, or foster care, under the age of six months, during normal business hours.

### SECTION 1. INFANT AT WORK APPROVAL

Team members interested in participating in the Infant at Work program must complete and submit to their supervisor an Infant at Work Request form ([SFN 54321](#)) that includes an individual plan that will set forth general information regarding the infant's care, including the days and times the infant will be in the work environment and the intended duration of the infant at work arrangement. The manager will review the request with their chain of command. Final approval of the agency director or designee is required. The plan must be approved before the infant can be brought to the work environment during business hours.

If the team member's request is approved, the team member and other parent (if applicable) of the infant are required to sign a waiver of liability, indemnification, and medical release ([SFN 59429](#)) prior to bringing the infant to the team members work.

### SECTION 2. REQUIREMENTS

For instances where the infant accompanies the team member to the physical office location:

- Should stay in the parent's workspace unless another team member agrees to have the infant in their workspace for a short period of time.
- Appropriate furniture for the infant's care, i.e., crib, playpen, swing, etc. must be provided by the parent.
- A sick infant is not brought to the physical office location.
- In the event the infant becomes sick or is fussy for a prolonged period causing a distraction or prevents the parent from accomplishing work, the baby shall be removed from the physical office location.
- The infant is not to come in contact with clients and/or customers.
- Diaper changes must be done in a private environment not in view of the public or co-workers. Used cloth diapers must be stored in a closed container and taken home daily. Used disposable diapers must be wrapped appropriately and discarded in an appropriate container outside of an office or meeting space.

Consideration must be taken to ensure the environment is safe for the infant at all times.

A team member's child may not travel in a state vehicle. If the parent's job includes travel, he or she will need to make childcare arrangements for those days of travel.

The agreement may be terminated at any time, by either party, with written notification.

At the conclusion of the infant at work duration, the manager shall complete [SFN 54320](#), Managers' Infant at Work Review.



### **SECTION 3. TELEWORKING**

All of the tenants of this policy are in effect whether the team member is working at home or in an office setting. Teleworking is not designed to be a replacement for appropriate childcare or eldercare. Although an individual team member's schedule may be modified to accommodate childcare or eldercare needs, the focus of the arrangement must remain on job performance and meeting business demands. Teleworking team members are encouraged to discuss expectations of teleworking with members of their household.

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