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 supervisor or co-worker, 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 employee’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 employee, and the original copy retained in the employee’s personnel file. All disciplinary documentation placed in an employee’s personnel file must be reviewed and signed by the employee and must inform the employee they have the opportunity to respond to any materials filed in their personnel file. If the employee 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 employee was shown the material, was requested to sign the material to verify that the material had been read, and that the employee refused to sign the copy to be filed. In the presence of the employee and a witness, the agency head or the agency head’s designated representative shall sign and date a statement verifying the refusal of the employee to sign the copy to be filed.

**Discipline of Regular Classified Employees**
An employee 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 an employee 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 employee 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 supervisor’s notes or records. A copy of the verbal warning shall be given to the employee 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 supervisor and employee. The written warning must be placed in the employee’s personnel file and a copy must be given to the employee.

Pre-Action Notice
An appointing authority shall provide a written pre-action notice when the suspension without pay, demotion, or dismissal of a regular employee 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 employee.
b. An explanation of the allegations against the employee.
c. A provision for the employee to respond in writing within a minimum of five working days.
d. A statement regarding the employee’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 employee.

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

The employee 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 employee’s response must be in writing and received on or before the time set forth.

Final Action Notice
The employee 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 employee, 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 employee’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 employee’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 employee is exempt from the overtime provisions of the Fair Labors 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 employee will include an explanation containing the elements described in the pre-action procedure. Agency Human Resources must review all suspensions prior to implementation.

**Demotion**

An employee 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 employee 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 employee will include an explanation containing the elements described in the pre-action procedure.

Reference: NDAC 4-07-19-02