



OMB Human Resource Policy Manual

**Office of Management and Budget
Divisions:**

- **Administration**
- **Central Services**
- **Facility Management**
- **Fiscal Management**
- **Human Resource Management
Services**
- **Risk Management**

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 employees. The Office of Management & 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 employee affected by the provisions of this manual.

OFFICE OF MANAGEMENT AND BUDGET HUMAN RESOURCE POLICY MANUAL

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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/>.

Authorization for Release of Medical Information for ADA, SFN 59516	Chapter 3
Interactive Process Questionnaire, SFN 59517	Chapter 3
Drug-Free Workplace Acknowledgement, SFN 16769	Chapter 3
Employment Reference Check Form, SFN 52826.....	Chapter 4
Information Release Authorization for Employment Consideration, SFN 51915	Chapter 4
Employee Records Access, SFN 17770.....	Chapter 5
Employee Orientation Checklist, SFN 19452.....	Chapter 5
Monthly Time Report for Non-Exempt Employees, SFN 58680	Chapter 6
Leave Donation Request, SFN 58960.....	Chapter 7
Employee Request for Family Medical Leave, SFN 58548	Chapter 8
Request for Tuition Reimbursement, SFN 51372.....	Chapter 10
Employee Grievance, SFN 18409.....	Chapter 14
Appeal to ND Human Resource Management Services, SFN 3096	Chapter 14
Employee Exit Checklist, SFN 19451	Chapter 15
Employment Termination Questionnaire, SFN 58740	Chapter 15
Reduction-In-Force Analysis Worksheet, SFN 17168.....	Chapter 15
Infant at Work Request, SFN 54321	Chapter 18
Supervisors' Infant at Work Review, SFN 54320	Chapter 18
Infant at Work Waiver of Liability, Indemnification, & Medical Release, SFN 59429.....	Chapter 18

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Employment Reference Check Form, SFN 52826.....	Chapter 4
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Employee Records Access, SFN 17770.....	Chapter 5
Employee Orientation Checklist, SFN 19452.....	Chapter 5
Monthly Time Report for Non-Exempt Employees, SFN 58680	Chapter 6
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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 employees.

Section 2. Application

The policies in this manual apply to all employees of OMB. Exceptions to these policies may be made only with the written approval of the OMB director. Benefits discussed are available to those employees 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, supervisors, and employees in hard copy or electronically. Each division director shall ensure that this manual is accessible to all employees.

Section 4. Definitions

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

- a. "Authorized position" means a position authorized by the Legislature. A position may or may not be funded.
- b. "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.
- c. "Compensation" means the combination of salary or wages and benefits provided to an employee.
- d. "Director" means the director of OMB.
- e. "Deputy" means the deputy director of OMB. The deputy acts on behalf of the director as authorized by the director.
- f. "Discipline" means any action taken by the director, a division director, a manager, or a supervisor that is designed to correct the job performance or work-related behavior of an employee.
- g. "Division director" means the director of a specifically identified division within OMB.
- h. "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.

- i. "Employee" means an individual who receives compensation for employment with OMB.
- j. "Exempt employee" means an employee who is not subject to the overtime requirements of the Fair Labor Standards Act.
- k. "Manager" means an employee 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 "supervisor."
- l. "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.
- m. "Non-exempt employee" means an employee who occupies a position that is subject to the minimum wage and overtime requirements of the Fair Labor Standards Act.
- n. "Regular employee" 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.
- o. "Probationary employee" 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.
- p. "Promotion" means the reassignment of an employee from the employee's present position to another existing position that is at a higher pay grade.
- q. "Reduction-in-force" means the loss of employment by an employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization. (REF: N.D. Admin. Code 4-07-11-02)
- r. "Salary" means a fixed portion of an employee's compensation that is paid on a regularly scheduled basis.
- s. "Supervisor" means an employee who is responsible for assigning work to others, determining the standards of performance, and providing formal evaluations of others' work performance. The term "supervisor" may be used interchangeably with the term "manager."
- t. "Temporary employee" 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. (REF: N.D. Admin. Code 4-07-28-02)
- u. "Transfer" means a personnel action that results in the reassignment of an employee from one position to a different position that has the same pay grade as the employee's previous position and that does not result in a break in service. (REF: N.D. Admin. Code 4-07-05-01.1)

CHAPTER 2 RESPONSIBILITIES

Section 1. Employee Responsibilities

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

Confidentiality

Employees must respect the confidentiality and sensitive nature of information with which they may come into contact. It is imperative that employees do not reveal or divulge any confidential information or documents. Employees 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. Employees are expected to practice good customer service in carrying out their duties.

Dress/Image

Employees 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

Employees will be issued a picture identification card identifying the individual as an employee 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 supervisor and submitted to Central Duplicating Services. The card must be returned upon termination of employment with the division.

Keys

Only employees who are scheduled to come to work prior to the building opening or who are in a supervisory position will be issued a key to division offices. Employees will be required to sign for the key. It is an employee's responsibility to immediately report to the supervisor a lost or stolen key, and the employee will be charged a fee to replace a lost or stolen key. Employees must return their keys to the supervisor upon termination of employment.

Century Center - All employees 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 employees 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 employee to immediately report to WSI Human Resources all card keys that are lost, stolen, or not working properly. OMB employees 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. Employees 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.

An employee 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 employee's immediate supervisor or manager, unless the employee suspects that the supervisor or manager has participated in or condoned the act. In that case, the employee 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, employees should not confront individuals suspected of wrongdoing or initiate fraud investigations on their own because such actions may compromise any ensuing investigation.

Employees 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.

Section 2. Ethics Policy

The highest standard of ethical conduct and fair dealing is expected of each employee 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 employees, our vendors, and our community. This policy provides general guidance on the ethical principles that employees must follow, as no policy can anticipate all situations. OMB depends on the basic honesty and good judgment of its employees, and their sensitivity to the way others see us and may interpret our actions. If employees have any questions about this policy, it is their responsibility to consult their supervisor or the division director. Exceptions to this policy may be authorized only by the OMB director. All employees are expected to promptly disclose anything to their supervisor or division director that

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

Compliance With Laws and Regulations

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

Conflicts of Interest

Employees must avoid any interest, influence, or relationship that might conflict or appear to conflict with the best interests of OMB and the State of North Dakota, or that might affect one's working judgment or loyalty. Employees must avoid any situation in which their loyalty may be divided and promptly disclose any situation where an actual or potential conflict may exist. Examples of potential conflict situations include, but are not limited to:

- a. Ownership or a significant financial interest in, or other relationship with, a supplier to OMB or the State of North Dakota.
- b. Having a financial interest in any business transaction with OMB or the State of North Dakota.
- c. Accepting gifts, entertainment, or other benefit of more than a nominal value from a supplier to OMB or the State of North Dakota.

An employee with a conflict must disclose the conflicting interest, and remove themselves from any negotiations, deliberations, or decisions involving the conflict. Employees may, however, state their position and answer questions when their knowledge may be of assistance.

Giving and Receiving Gifts/Money

An employee may not accept or give anything of value for official position, opinion, or action or non-performance of a legal duty or for purposes of attempting to influence any other public official or employee in the exercise of an official action. A "thing of value" does not mean a campaign contribution properly received and reported in accordance with N.D.C.C. ch. 16.1-08.1.

Employees may accept meals and refreshments if they are infrequent, of nominal value, and in connection with business.

Employees should inform anyone doing or desiring to do business with OMB that all gifts of more than a nominal value are prohibited. If an employee receives a gift or a benefit of more than nominal value, the employee must report it promptly to their supervisor or the division director. The item must be returned or donated to a suitable charity.

Political Activity

OMB recognizes that employees, 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 an employee'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 employee's working hours or an employee must be on annual leave.

Employees may personally contribute to a candidate or party of their choice. However, employees 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 an employee 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 employees, clients, and customers.

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

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

Employee Privacy and Other Confidential Information

Employee privacy is covered under OMB's Payroll and Miscellaneous Fiscal Policies, Policy 103 Release of Public Records, and N.D.C.C. § 44-04-18.1.

Use and Protection of OMB and State Assets

Employees have a duty to preserve the assets of OMB and the State of North Dakota. Employees 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 in order to promote overall economy for the purpose intended.

Employees 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 N.D.C.C. § 44-04-07.

Employees 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

Employees 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 employees 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. Division Director Responsibilities/Accountability

Division directors shall develop and implement plans, programs, and procedures to accomplish the assigned mission of their division.

Division directors shall document the progress of individual employees, and the progress of the division as a whole, toward meeting the assigned goals and objectives.

Division directors are accountable for the performance of any subordinate.

Section 4. Supervisor/Manager Responsibilities

Supervisors are responsible for ensuring the satisfactory completion of their own assigned work, and they are responsible for the results of the work effort of their subordinates. Supervisors must be aware of required performance standards and ensure that acceptable levels of performance are maintained.

Supervisors shall provide their employees with the guidance necessary for them to accomplish their assigned tasks.

Supervisors shall evaluate the performance of their employees annually.

CHAPTER 3 EMPLOYMENT PRACTICES

Section 1. Equal Employment Opportunity (EEO) Policy

OMB seeks to ensure a work environment free of discrimination, intimidation, coercion, or retaliation. It is the policy of OMB to assure that all applicants for employment and employees of OMB are subject to uniform human resource policies and should not be subjected to discrimination in all terms and conditions of employment on the basis of an applicant's or an employee'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 employer. OMB makes its employment process accessible to persons with disabilities. Persons needing accommodation should contact the division representative identified in the job announcement or HRMS at 328-3290 voice or through ND Relay Services toll free 1-800-366-6888. Violations of this policy are grounds for disciplinary action up to and including termination of employment.

OMB prohibits individuals from engaging in any form of threats, retaliation, or discrimination against a person who has opposed any unlawful discriminatory practice or who, in good faith, has filed a complaint, testified, assisted, or participated in an investigation, proceeding, hearing or litigation. Anyone found to be retaliating against an individual will be subject to disciplinary action up to and including termination of employment.

Employees or applicants who believe they are illegally discriminated against should file a formal grievance as provided for in Chapter 14 of this manual. Complaints may also be filed with the appropriate state or federal agency.

If, after a complete review of the facts, an employee is found to have inappropriately or unlawfully discriminated against an applicant, another employee or customer of OMB, such action will result in disciplinary action up to and including termination of employment. An employee who is found to have intentionally made a false report of discrimination or who fails to cooperate with the investigation of a complaint will be subject to disciplinary action.

OMB seeks to ensure all employees are aware of and abide by laws involving each individual's rights. These laws include but may not be limited to:

- a. Equal Pay Act (federal 1963)
- b. Age Discrimination in Employment Act (federal 1967)
- c. Rehabilitation Act (Section 504 federal 1973)
- d. Civil Rights Act (Title VII federal 1964)
- e. Americans With Disabilities Act (federal 1990) and the Americans With Disabilities Act Amendments (federal 2008)
- f. Public Employee Relations Act (N.D.C.C. ch. 34-11.1)

- g. Human Rights (Discrimination) (N.D.C.C. ch. 14-02.4)
- h. Equal Pay for Men and Women (N.D.C.C. ch. 34-06.1)
- i. Age of Employee, Discharge or Refusal to Hire (N.D.C.C. § 34-01-17)
- j. Genetic Information Nondiscrimination Act (Federal 2008, GINA)

For specific details on these laws and corresponding guidelines, employees are encouraged to review the related laws and administrative rules.

Section 2. Harassment Policy

Conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment constitutes unlawful harassment. Unlawful harassment can be verbal, non-verbal, or physical conduct or communication that shows hostility or aversion towards an individual because of race, color, religion, sex, age, genetics, sexual orientation, national origin, disability or other protected status. Examples may include, but are not limited to: epithets, slurs, jokes, negative stereotyping, written or graphic materials, pin-ups, posters, calendars, photographs, cartoons.

Any employee who engages in conduct that is illegal or inappropriate in view of this policy will be subject to disciplinary action up to and including termination of employment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct or communication of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment.
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

In addition, employees have the right to be free of harassment within the workplace from nonemployees such as customers or other individuals who provide services to or within OMB. Therefore, an employee may discontinue service or a telephone call in a situation in which a nonemployee is being abusive or harassing, including situations subjecting the employee to conduct, communication, or sexually explicit material which interferes with the employee's work performance or creates a hostile, intimidating, or offensive work environment. If this happens, the employee must immediately report the incident and the action taken to the immediate supervisor, and a record of the reason services were interrupted must be documented.

Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. These behaviors may include but are not limited to:

- a. Unwanted sexual advances or requests for sexual favors.

- b. Sexual jokes and innuendo.
- c. Verbal abuse of a sexual nature.
- d. Leering, massaging, or touching.
- e. Comments about a person's body, sexual prowess, or sexual deficiencies.
- f. Displaying or showing inappropriate sexually suggestive or offensive pictures or objects anywhere in the workplace.
- g. Degrading e-mail.

Early reporting and intervention are critical and have proven to be the most effective method of resolving actual or perceived incidents of harassment.

Employee Responsibilities

All employees are required to prevent sexual/unlawful harassment in the workplace. Employees must immediately report any perceived incidents of harassment or retaliation regardless of the person's position or identity, including customers, contractors, or other nonemployees. If an employee observes or experiences offensive conduct in the workplace or at any location, activity or event associated with OMB, the employee may promptly advise the offender directly that the conduct is unwelcome and offensive and request the conduct be stopped. If the employee has confronted the offender and the offensive conduct has not stopped, or the employee feels uncomfortable confronting the offender, the employee must notify the supervisor, the division director, the OMB director, or HRMS, who will then initiate appropriate action. Grievances of subsequent action or inaction may be pursued as provided for in OMB's Grievance policy, Chapter 14 of this manual.

Supervisor/Manager Responsibilities

Supervisors and managers are responsible to make every effort to prevent sexual/unlawful harassment in their respective work areas. Supervisors and managers must take immediate action to deal effectively with harassment or inappropriate behavior once such behavior has been brought to the manager's or supervisor's attention. This includes documenting the incident, reporting it to the division director, and initiating a workplace investigation when directed. HRMS is available to provide technical assistance to managers and supervisors on conducting workplace investigations. Incidents must also be reported to the Risk Management Division of OMB.

If the alleged harasser is a division director, the OMB director must be notified. If the alleged harasser is an appointed or elected official, the supervisor must notify HRMS or the Governor's Chief of Staff who will take appropriate action. Failure to report incidents of sexual/unlawful harassment will subject the manager/supervisor to disciplinary action up to and including termination of employment.

Division Director Responsibilities

Division directors will make every effort to prevent sexual/unlawful harassment in their respective divisions. Division directors will take immediate action to resolve allegations of harassment or inappropriate behavior, which may include but may not be limited to initiating a workplace

investigation, consulting with HRMS and legal staff, and taking appropriate corrective and disciplinary action. Division directors must also see that the incident is reported to the Risk Management Division of OMB.

OMB will investigate complaints of harassment or inappropriate behavior in a timely, thorough, and discreet manner and will take appropriate corrective and disciplinary action.

An employee who is found to have intentionally made a false report of harassment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary action up to and including termination of employment.

Section 3. Americans With Disabilities Act (ADA and ADAAA)

The policy of OMB is to ensure complete compliance with the ADA and Amendments and provide reasonable accommodations to the known physical and mental limitations of a qualified applicant or employee with a disability. A qualified individual, as defined by the ADA Amendments Act of 2008, is an individual who, with or without accommodation, can perform the essential functions of the employment position that the individual holds or desires.

Managers shall identify the essential functions and physical/mental demands of a position before beginning any recruiting effort. The director of OMB has the final decision whether a request for an accommodation poses an undue hardship.

Any employee or applicant who feels discriminated against because of a disability should file a grievance in accordance with Chapter 14 of this manual.

Informal Discussion to Identify Reasonable Accommodation

If an applicant requests an accommodation to participate in the application and/or interview process, the supervisor shall discuss with the applicant an appropriate accommodation. The supervisor and the division director will determine the feasibility of the requested accommodation and provide an effective accommodation that would not be an undue hardship.

If a qualified OMB employee with a disability identifies the need for an accommodation, the supervisor should make a reasonable attempt to provide an accommodation that will give the employee an equally effective opportunity to perform the job's essential functions and enjoy equal benefits and privileges. The employee often is in the best position to suggest an appropriate accommodation, since the employee is generally most familiar with his or her own disability, the limitations it presents, and the best way to adjust the job and/or environment. When an appropriate accommodation is needed, the supervisor and individual should engage in what the EEOC calls an "informal interactive process" to determine what would be a reasonable accommodation. This process involves talking to the employee with the disability about the person's particular abilities and limitations as they pertain to a job's essential functions, or the privilege or benefit at issue. The informal discussion should identify the barriers to performance or participation in the benefit or privilege and should include discussion regarding how an accommodation might overcome these barriers. The employee with a disability should be encouraged to not only discuss the limitations involved, but also discuss the employee's own recommendations for accommodations.

Supervisors should make a record of the following points arising from informal discussions with an employee regarding proposed accommodations:

- a. The employee's explanation of the work limitations that the employee believes exist because of the disability;
- b. The accommodations suggested by the employee; and
- c. The supervisor's agreement to provide such accommodations if the informal discussions result in a tentative agreement about the reasonable accommodation provided, and the supervisor has determined through consultation with the division director and the OMB director that the accommodation will not pose an undue hardship for the division or OMB.

Formal Steps to Identify Reasonable Accommodations

If informal discussions do not result in a resolution or the proposed accommodation seems significantly difficult, unduly costly, extensive, substantial or disruptive, or will fundamentally alter the business of the division, a more formal analysis is required. The supervisor should follow a four-step approach to determine whether reasonable accommodations are available. To initiate a formal analysis, supervisors are required to consult the division director who may want to contact HRMS for assistance.

Step 1. The supervisor should review the essential functions of the job and determine any barriers that exist in the work environment. With the assistance of the employee, the supervisor will identify the employee's or applicant's work abilities and work limitations. The supervisor will then identify the job tasks or work environment that limit the individual's effectiveness or prevent performance. The employee may be required to provide medical documentation that verifies the disability and supports the need for a particular accommodation. (See SFN 59516, Authorization for Release of Medical Information for ADA, and SFN 59517, Interactive Process Questionnaire.)

Step 2. In concert with the employee or applicant and the division director, the supervisor will determine what reasonable accommodations are available. In consultation with the employee, the supervisor and the division director will consider the effectiveness of those identified possible accommodations. If several effective accommodations would provide equal employment opportunity, the division director will consider the individual's preference and select an accommodation that is most appropriate for both the division and the employee. The division director may choose among the effective accommodations and pick one that is easier to provide or is less expensive. The employee need not accept an accommodation that the employee has not requested and does not believe is necessary. Although the employee will be consulted about the accommodations the employee desires, the division director should take steps to determine if reasonable accommodations are available.

Step 3. The supervisor and the division director, in consultation with the OMB director or designee, will determine whether the available accommodation is reasonable and not likely to result in an undue hardship. An interdivisional collaborative effort is recommended to integrate efforts among all appropriate divisions to assist employees in identifying reasonable accommodations. HRMS is available to provide technical assistance and to direct the division director to potential sources of information regarding accommodations. Once possible accommodations are determined, the supervisor and/or division director will perform a review of the reasonableness of the accommodation and together with the OMB director will determine whether the accommodation results in undue hardship.

In determining the appropriateness of an accommodation and whether or not the accommodation would result in an undue hardship, OMB will consider:

- a. The net cost of the accommodation, taking into consideration the availability of outside funding.
- b. The overall nature of OMB's operations with respect to the number of employees; the number, location and type of services; and the financial resources available.
- c. The type of OMB's operation including the composition, function and structure of the workforce and the geographic and administrative or fiscal relationship of OMB or facilities in question.
- d. The impact of the accommodation on the operation of OMB or employing division including its impact on other employees' ability to perform their duties and OMB's ability to conduct business.

Determinations regarding whether an accommodation constitutes an undue hardship will be made on a case-by-case basis. If OMB determines that the cost of an accommodation is prohibitive, it will evaluate whether other public or charitable support is available. The employee may also be consulted concerning bearing part of the cost if OMB determines that the accommodation would be an undue hardship. Drawing upon inside and outside OMB expertise will help develop and promote an environment that is open to an employee's disclosure of a disability, is flexible in discussing accommodation to functional limitations, and is sensitive to the relationships among all workers.

Step 4. The supervisor will, in concert with the employee, determine whether the accommodations, once adopted, are working in practice. Progress should be closely monitored by the supervisor. The supervisor will document whether the accommodations are working. The situation will be evaluated until both the employee and the supervisor are comfortable with the results.

If the rejection of a proposed accommodation renders the employee unable to perform a job's essential functions and no other reasonable accommodation exists, then the person may no longer qualify for the position. It is imperative that the supervisor and division director discuss this situation with the OMB director or designee before implementing any employer action. HRMS is available to provide technical assistance throughout the reasonable accommodation process.

Section 4. Workplace Threats and Violence

OMB is committed to providing a safe environment for its employees. Acts of violence or threatening behavior will not be tolerated in the workplace, and every effort will be made to prevent violent acts from occurring.

Violent acts or threats of violence include any activity by an individual that would cause another individual to feel unsafe due to the threat of physical harm. The violent behavior may take the form of verbal threats or harm to another person, damage of property, physical aggression, or harassment. Threats of violence include possession or display of a weapon of any type or exhibiting an object in such a manner that it appears to be a weapon or could be used as a weapon.

Employees who are subject to or become aware of any violent acts or threats of violence shall immediately report the matter to their supervisor or any higher level authority.

Supervisors or managers who receive a report of violent activity or a threat of violence shall immediately assess the situation to determine the nature of the threat and take action as follows:

- a. Work units both in and outside of the Capitol complex should immediately dial 9-911 for **emergency** situations such as fire, tornado and medical issues, with a follow-up call to the Highway Patrol Headquarters at 328-2455 to alert them to the situation. For **non-emergency** or administrative issues, work units both in and outside of the Capitol complex should call the State Highway Patrol Headquarters at 328-2455. The State Highway Patrol is generally responsible for security and investigations on State property.
- b. When it is apparent that one or more individuals **in the Capitol complex** may be in immediate physical danger, the endangered employee or any observing employee should call the Highway Patrol Headquarters at 328-2455. Work units **not in the Capitol complex** should call 9-911 for situations regarding immediate physical danger.

When any action regarding a or b is taken by supervisors or managers, the information will be reported to the division director or the OMB director as soon as possible.

- c. When the danger of physical harm does not appear to be immediate, the endangered employee or observing employee must provide a full report of the circumstances to the supervisor, manager, division director, or the director of OMB as soon as possible.

A division director or the OMB director, upon receipt of a report of violence or a threat of violent activity, shall take action appropriate to the circumstances which may include requesting the proper authority to remove the violator from the work site, providing appropriate protection to the threatened person(s), and/or investigating or delegating a supervisor or HRMS to investigate the reported incident(s) that may form the basis for any corrective or disciplinary action. HRMS may be consulted regarding workplace investigation procedures. Risk Management must be notified of all incidents.

When a reported act of violence or threat of violent activity has been investigated, and the violator is an employee of OMB, the division director or the OMB director shall take appropriate action which may include participation by the employee in the employee assistance program, disciplinary action up to and including termination of employment and/or reporting incident(s) to law enforcement authorities.

When a reported act of violence or threat of violent activity has been investigated and the violator is not an OMB employee, the division director or the OMB director will take appropriate action which may include termination of the business relationship and/or reporting incident(s) to law enforcement authorities.

Section 5. Substance Abuse Policy

OMB's desire is to provide a drug-free, healthful, and safe workplace. Employees are required to report to work in a condition to perform their jobs in a safe, efficient, and satisfactory manner. The presence of alcohol and other drugs on the job and the influences of those substances on employees during working hours are inconsistent with the objectives of a drug and alcohol free workplace and will not be tolerated.

While at OMB's workplace and while conducting business-related activities of OMB, no employee may use, possess, manufacture, distribute, sell, or be under the influence of alcohol or illegal drugs or use legal drugs illegally. In addition, the legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to meet standards and perform the essential functions of the job in a safe manner that does not endanger other individuals, equipment, or property in the workplace.

Employees may be disciplined up to and including termination of employment for use of illegal drugs, illegal use of legal drugs, or use of legal drugs such as alcohol or other prescription/ nonprescription drugs. Discipline may be imposed for use during official working hours, including mealtime or other work breaks, or during nonworking hours when the effect of the legal drug inhibits the employee's job performance or the agency's performance. In addition, discipline may be imposed when the employee's behavior affects the agency's reputation, endangers others, or damages equipment or property. Off duty use of alcohol or other legal drugs is also cause for discipline when it results in an employee reporting to work "under the influence."

Violations of this policy may lead to disciplinary action, up to and including termination of employment, and/or participation in a substance abuse rehabilitation or treatment program. Violations may also have legal consequences.

A manager may require an employee to leave the workplace if the manager determines the employee 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 employee may be required to use a day of annual leave or sick leave. If the manager determines the employee should not operate a motor vehicle, the manager should arrange transportation for the employee. If the employee 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 employee appears unfit to operate a motor vehicle. Law enforcement officials should then be appropriately notified.

To inform employees about important provisions of this policy, OMB 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 employees, and consequences for violations of this policy.

Employees with questions or concerns about substance dependency or abuse are encouraged to use the resources of the Employee Assistance Program. Employees may also wish to discuss these matters or this policy with their supervisor or HRMS to receive assistance or referrals to appropriate resources in the community.

Under the Drug-Free Workplace Act, an OMB employee who performs work for a government contract or grant must notify OMB of a criminal conviction for drug-related activity occurring in the workplace. The report must be made within five days of the conviction. All OMB employees are required to sign a drug and alcohol free workplace acknowledgement (SFN 16769).

The use of alcohol and illegal use of drugs while operating a state vehicle is prohibited. Individuals operating a state vehicle under the influence of alcohol or illegal drugs will be subject to disciplinary action up to and including termination of employment. The use of legal prescription or nonprescription drugs while operating a motor vehicle may also result in disciplinary action when the drugs impair the employee's ability to drive.

When participating in social activities sponsored by the division, OMB, or which are associated with workplace activities, employees are expected to conduct themselves in such a manner so they do not represent a danger to themselves, other employees, or the general public, or damage the reputation of the division or OMB.

Section 6. Hostile Work Environment

OMB's policy is to provide an environment free of age, gender, race, ethnicity, religion, disability harassment, and harassment based on sexual orientation. Such harassment may include any activity that creates fear, intimidates, ostracizes, psychologically or physically threatens, embarrasses, ridicules, or in some other way unreasonably over burdens or precludes an employee from reasonably performing his or her work. Hostile Work Environment harassment generally occurs in supervisor/subordinate or peer/co-worker situations. Early reporting and intervention are critical and have proven to be the most effective method of resolving actual or perceived incidents of hostile work environment. Individuals experiencing any unwelcome behavior in the workplace or at any location, activity or event associated with OMB may advise the offender directly that the conduct is unwelcome and offensive and request the conduct be stopped. If the employee has confronted the offender and the offensive conduct has not stopped, or the employee feels uncomfortable confronting the offender, the employee must notify the supervisor or next level supervisor, the division director, director of OMB, or HRMS who will then initiate appropriate action.

OMB will investigate complaints of hostile or inappropriate behavior in a timely, thorough, and discreet manner and will take appropriate corrective and disciplinary action.

Supervisor/Manager Responsibilities

Supervisors and managers are responsible to make every effort to prevent a hostile work environment in their respective work areas. Supervisors and managers are responsible to take immediate action to deal effectively with allegations of hostile or inappropriate behavior once such behavior has been brought to the manager's or supervisor's attention. This includes documenting the incident, reporting it to the division director, and initiating a workplace investigation when directed. HRMS is available to provide technical assistance to supervisors and managers on conducting workplace investigations. Incidents must also be reported to the Risk Management Division of OMB.

If the alleged wrongdoer is a division director, the OMB director must be notified. If the alleged wrongdoer is an appointed or elected official, the supervisor must notify HRMS or the Governor's Chief of Staff who will take appropriate action. Notice must also be filed with the Risk Management Division. Failure to report incidents of hostile or inappropriate behavior will subject the manager/supervisor to disciplinary action up to and including termination of employment.

Division Director Responsibilities

Division directors will make every effort to prevent a hostile work environment in their respective divisions. Division directors will take immediate action to resolve allegations of hostile or inappropriate behavior. Actions may include but may not be limited to initiating a workplace investigation, consulting with HRMS and legal staff, or taking appropriate corrective and disciplinary action. All incidents must be reported to the Risk Management Division of OMB.

Hostile work environment harassment will not be tolerated by OMB. Disciplinary action can and will be taken against any employee who engages in such behavior. In addition, an employee who is found to have intentionally made a false report of harassment or hostile work environment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary action up to and including termination of employment.

Section 7. Policy Review

All employees 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.

CHAPTER 4

RECRUITMENT, SELECTION, REFERENCE AND BACKGROUND CHECKS

Section 1. Recruitment & Selection

It is the goal of the Office of Management & 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 an employee 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.

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

Temporary employees 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 veterans preference are entitled to preference in employment, in accordance with N.D.C.C. ch. 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 also 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 supervisors. If an applicant indicates that a current supervisor 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:

- a. 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 supervisors in developing additional reference questions.
- b. 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.
- c. Maintain all documentation as well as written references in the recruitment file.
- d. 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 employee who receives a request for work history or other personnel information regarding current or former employees, 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 (N.D.C.C. § 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.

CHAPTER 5

EMPLOYEE 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 employees. Therefore, within OMB certain employees may be assigned a different standard work week by their division director.

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

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

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

Work Breaks

Employees 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 advanced with the supervisor.

Lunch Breaks

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

Nursing Mother Breaks

In accordance with the Patient Protection and Affordable Care Act amendment of the Fair Labor Standards Act, OMB employees will be given reasonable paid break time to express breast milk for a nursing child for one year after the child's birth. Employees are provided a flexible schedule for breast feeding or pumping breast milk for the child. The time should not exceed normal time allowed for lunch and breaks. However if additional time is necessary, annual leave must be used or the employee can use a flex schedule to come in early or stay late to make up the time. Flexible schedules must be approved by the supervisor prior to implementation.

Travel Time

In work-related situations, the time a non-exempt employee 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 employee 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 employees. 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 for a position changes. HRMS will assist in this analysis when requested to do so.

Exempt Employees

Exempt employees are not required to be compensated for overtime. Supervisors 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. Supervisors may want to consider time off when the workload is less demanding to counter-balance the additional time required during a heavy work period. Supervisors shall exercise prudent care in assuring fairness in granting time off. Although formal records are not required by OMB, supervisors 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 employee is required to expend significant overtime hours on a major project or because of unexpected or extraordinary work demands, the supervisor 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 employees working the additional hours for which they will be requesting compensatory time off or monetary compensation. Exempt employees requesting to work significant overtime must receive approval either verbally or in writing as directed by the division director.

Exempt employees 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 employees.

Non-Exempt Employees

Non-exempt employees must be paid overtime. By agreement prior to the hours actually being worked, non-exempt employees 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. Employee 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, an employee who works 41 hours and 7 minutes would be paid 41 hours. An employee 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 employee 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 employees. A time sheet or time clock should be used for this purpose.

Employees required to punch a time card must punch in or out within six minutes of their designated start/stop time. Employees who fail to punch the time card must notify their supervisor to have the correct time approved and initialled. Repeated failure to punch a time card may be grounds for disciplinary action.

A non-exempt employee 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 employee during the past three years of employment or the final regular rate received by the employee, whichever is higher as required by FLSA.

An employee 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 an employee 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 supervisory approval to work overtime must be obtained by a non-exempt employee before working hours in excess of forty in a week. Failure to secure approval to work overtime may subject an employee to disciplinary action up to and including termination of employment.

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

Employees who occupy non-exempt positions shall accurately fill out appropriate time records or punch a time clock that shows the actual hours worked and any leave taken. These records must be signed and dated by the employee and supervisor on a weekly basis and filed with the division payroll clerk.

A monthly time report must be used by all non-exempt employees who do not use a time clock (SFN 58680, Monthly Time Report for Non-Exempt Employees). Exempt employees shall also use a form to record absences only, unless you are part of the Absence Management On-Line System.

Records must be maintained for all regular and overtime hours for non-exempt employees. 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.

Section 5. Safe Harbor Policy - Exempt Workers

OMB's policy complies with the salary basis requirements of the Fair Labor Standards Act. Therefore improper deductions from the salaries of exempt employees are prohibited. OMB does not allow deductions that would violate the FLSA. If an exempt employee believes an improper deduction has been made to the employee's salary, the employee must immediately report it to their supervisor or the division director. Reports of improper deductions will be promptly investigated. If an improper deduction has occurred, the employee will be promptly reimbursed for any improper deduction.

Section 6. Personnel Records

Employee personnel files are open records. Only one official personnel file is maintained per employee. This file must be under the control of the division director or a designated representative. A record of access must be in each personnel file. SFN 17770 Employee Records Access Form is used for that purpose.

An employee or the employee's designated representative must be permitted to examine the employee's own personnel file by appointment during normal business hours. Reviewing the file must be supervised. 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 an employee's character or performance may be placed in the employee's file only when the employee has signed them. Should an employee refuse to sign the copy to be filed, the division director or designated representative shall indicate on the copy 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 an employee and a witness, the division 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 an employee's file.

Medical information about an employee must be maintained in a separate file (N.D.C.C. § 44-04-18.1). Medical files are subject to strict confidentiality and should remain in the control of the division director. Exceptions to the confidentiality requirements are as follows:

- a. Supervisors may be informed of an employee's medical restrictions on work duties.
- b. First aid/safety personnel may be informed of an employee's medical status or history, as appropriate.
- c. 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 employee. Medical records must be retained for the term of employment plus six years.

Managers and supervisors should maintain informal notes to use in preparing employee performance evaluations. These notes should not be placed in an employee's file.

When an employee's personnel file has been accessed by a person who is not an employee of the division, the employee should be promptly notified by the division director or designated representative. The division 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. Any person who requests a copy of a document in a file should be given one. The division may charge a reasonable cost for making the copy.

Section 7. Records Management

The Records Management Division of Information Technology Department (ITD) has developed a Records Retention Program and the Office of Management and Budget (OMB) has implemented a [Records Retention Schedule](#) that complies with ITD's records management requirements, including retention/destruction of both paper and electronic records.

Policy

It is OMB'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 section within OMB is required to establish and maintain a records management program meeting the following minimum requirements:

1. Create, receive, and maintain official records providing adequate and proper documentation as evidence of OMB's business activities.
2. Manage records, regardless of format, in accordance with applicable statutes, regulations, and policies.
3. Maintain electronic records to ensure they are accessible throughout their entire life cycle.
4. Secure records to protect the legal and financial rights of the government and persons affected by government activities.

5. Dispose of records as specified in the approved records retention schedules. Records and other documents that are no longer sufficiently active to warrant retention in office space shall be removed to an inactive storage facility, if available.

Roles and Responsibilities

The employees of OMB are ultimately responsible for creating and preserving records that adequately and properly document the organization, functions, policies, decisions, procedures, and essential transactions of OMB.

Each OMB Division Director and records coordinator are responsible for providing the leadership, planning, overall policy, guidance, training, and general oversight of records management in OMB.

Division Director:

- Ensure that a Records Management Program is developed for their Division which includes retention/disposal of both paper and electronic records.

Records Coordinator:

- Review and coordinate the approval of OMB records retention schedules.
- Distribute annual records disposal information.
- Coordinate records management issues.
- Provide technical advice and training to all OMB employees regarding the establishment and maintenance of effective records management programs.
- Evaluate record keeping practices to determine the effectiveness of the program.
- Conduct periodic evaluations of records management programs within OMB.
- Prepare Record Series Descriptions for additions, changes, or deletions to the records retention schedule and submit to ITD Records Management Division.

Managers/Supervisors:

- Inform your division's records coordinator when updates are needed to your division's records retention schedules for records created and maintained by the division/section.
- Ensure records are disposed according to the approved records retention schedule.

Employees:

- Create and manage the records necessary to document the agency's official activities and business.
- Inform your supervisor if additions, changes, or deletions to Record Series Descriptions are needed.
- Protect records of a confidential nature from unauthorized access.
- Dispose of records, regardless of format, according to the approved records retention schedule.
- Implement proper recordkeeping procedures for efficient access and retrieval.

Records Retention Schedules for all divisions are available on ITD's website at https://www.nd.gov/itd/sites/itd/files/legacy/retention/999/999001_descriptions.pdf.

Section 8. Litigation Hold Order

When the Office of Management and Budget (OMB) 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 OMB’s established records management plan, requiring certain documents and electronic information be retained for longer periods of time in an unaltered form.

OMB’s “[litigation hold](#)” and [preservation of evidence procedures](#) may include any and/or all of the following, based upon the situation:

1. If employees 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 or supervisors should contact the North Dakota Solicitor General (Director of Civil Litigation) at 701-328-3640.
2. A Destruction Hold Notice (SFN 52376) (<http://www.nd.gov/eforms/Doc/sfn52376.pdf>) 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 your 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 handheld devices (cell phones, Blackberries, Palm Pilots)
 - iii. Storage devices including CDs and ZIP drives
 - iv. Offsite storage
 - v. Remote computers with network connections
 - vi. CDs, DVDs, Memory Sticks, and other portable storage devices
 - vii. Home computers or equipment
 - d. Identify how best to implement the litigation hold, including how to preserve electronic data. Implementation includes:
 - i. Arranging for the appropriate individual (agency head, division director, assistant attorney general), to send a written notice to employees at all applicable organizational levels
 - ii. Specifying the documents and other materials as to which diligent efforts should be made to preserve and the method and places of preservation.
 - iii. Notifying the appropriate agency personnel of steps the agency needs to take to preserve

- iv. Copying or cloning of hard drives.
- v. Notifying the appropriate individual(s) in OMB 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.
- vi. Determining how to monitor compliance with the litigation hold notice by periodically checking back with affected management and staff.
- vii. 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.
- viii. If needed, determining who will assist in reviewing documents for production and assertion of the privileges.
- ix. Determining how affected staff will be notified when the litigation hold has been canceled or removed.

Section 9. Employee Orientation

Supervisors shall orient new employees 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 actually begins before the employee comes to work and continues on 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 employees, click on Employee Orientation (www.nd.gov/hrms/managers/guide/orientation.html) and SFN 19452, Employee Orientation Checklist. Both documents will assist in ensuring that the process is completed in a thorough, timely manner.

As part of the orientation, 1) Supervisors will enroll new employees in the State's New Employee Orientation program, conducted monthly by PERS and HRMS. This program provides information on benefits, as well as rules and regulations that state employees must follow. For a course description and scheduled times, visit HRMS' training website at www.nd.gov/hrms/employees/training/development.html. 2) The OMB division director will coordinate a meeting between the new employee and each of the other OMB division directors. The employee will learn the function of each division and also be introduced to staff.

All new employees 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 employees shall have an initial ergonomic workstation assessment at the time of hire.

All new employees 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.

CHAPTER 6

SALARY ADMINISTRATION

The OMB Pay Administration Plan includes all the requirements set forth in Administrative Rules N.D. Admin. Code ch. 4-07-02 entitled “Salary Administration Procedures.”

Section 1. Wage and Salary Levels

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

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

- a. The position is a legislatively authorized position.
- b. The position is appropriately classified.
- c. The division director has authorized filling the position.
- d. The Hiring Council has authorized filling the position if the position warrants review by the Hiring Council.

Provided the above criteria have been met, division 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 employee hired. Approval by the OMB and HRMS directors is required if the starting level of wages or salaries for a newly hired employee exceeds the midpoint of the appropriate pay range.

Section 2. Changes to Wage and Salary Levels

Adjustments to the wage or salary level of division directors are made by the OMB director. Adjustments to the wage or salary level of all other employees require the approval of the appropriate division director.

Adjustments to the wage or salary level of employees may not be considered automatic or across-the-board unless expressly authorized by the OMB director. All salary adjustments must be in compliance with the administrative rules on salary administration procedures in N. D. Admin. Code 4-07-02.

Section 3. Performance Bonus

The Employee Performance Bonus program allows division directors to recognize and reward regular employees for exceptional performance or work achievement.

Definition

A performance bonus is a lump-sum payment, which is not part of an employee's base salary, to recognize and reward exceptional performance or work achievement above and beyond the call of duty where the employee has achieved unexpected positive results or achieved acceptable results in unusually complex and difficult circumstances. Examples would be completing a short-term project critical to the agency or demonstrating exceptional performance documented by the supervisor.

Employee Eligibility Requirements

The division director must document in writing to the OMB director the employee's exceptional efforts and accomplishments and that the following technical requirements have been met:

- a. The employee has held a position in state government for at least one year before a bonus is paid.
- b. The employee is a full-time or part-time regular nonprobationary employee holding a regularly funded nontemporary position.
- c. The employee has had an overall exceptional performance rating or, in the case of a special project or work achievement, has maintained satisfactory overall performance.
- d. The employee has not received a previous performance bonus during the fiscal year.
- e. The employee has not or will not receive more than \$1,000 in bonuses per fiscal year.

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

Program Requirements

- a. The agency must have a written performance evaluation program in place for more than one year before paying a bonus.
- b. The tool used to evaluate employee work performance must have at least three levels of performance criteria.
- c. A division director may not provide performance bonuses to more than 25 percent of the division's regular employees employed on July first of the fiscal year in which the bonus is paid except as provided in the next paragraph. The OMB director, however, may increase the number of eligible employees in a division if the overall OMB percentage will not exceed 25 percent of the number of regular employees employed by OMB on July first of the fiscal year in which the bonus is paid.

Upon a showing of special circumstances as outlined in N.D. Admin. Code § 4-07-02-21, Human Resource Management Services may approve performance bonuses above the twenty-five percent limitation.

- d. Bonus payments may not be included in an employee's base salary for purposes of calculating any wage or salary increase.
- e. Employee performance bonuses must be funded from within the division's budget for salaries and wages. The OMB director, however, may make exceptions and look to the department's budget as a whole.

Implementation

Requests for performance bonuses must be documented in detail and submitted by the supervisor or an employee(s) on behalf of another employee to the division director. A division director may also request performance bonuses. The division director will review the requests with the OMB director, who shall approve or deny any requests. The requested bonus amounts may be increased or decreased at the discretion of the OMB director to maintain consistency throughout the department.

Bonus payments may be awarded at any time subsequent to completion of exceptional performance, but generally should be processed as soon as possible after the event.

Section 4. Retention Bonus

A retention bonus may be given as an incentive to retain an employee within a division unless the employee 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 N.D. Admin. Code § 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:

- Demand exceeds supply.
- Special qualifications are required.
- Competition with other employers is the strongest.
- There is a risk of losing an incumbent with rare skills.
- The position is filled by a highly skilled employee who is in high demand in the marketplace.
- Loss of the employee would result in significant replacement costs.
- The position is filled by key personnel.
- The position has other unique recruitment or retention issues identified and documented by the appointing authority.

Section 5. Procedures to Calculate Salaries for Incomplete Months of Service

Employees working an incomplete month will be paid for the time worked. The following procedures show the proper methods of calculation. For additional information contact the payroll section of OMB Fiscal Management Division.

New Employees

Except as noted below, no new employee's starting date of employment will be accepted to be effective on a holiday. The starting date will be effective at the opening of business on the working day immediately following the holiday. However, a state employee may start on a holiday to avoid a break in service for benefit purposes when transferring to another state agency.

When a new employee on full-time or part-time status does not complete a full month of service (e.g., hired on the 11th of the month), the salary for the first month is computed as follows:

- a. The first step is to convert all days to hours.
- b. Full-time status formula:

$$\frac{\text{Hours worked} + \text{hours in paid leave status}}{\text{Payroll hours in month}} \times \text{monthly rate of pay}$$

- c. Part-time status formula:

$$\frac{\text{Hours worked} + \text{hours in paid leave status}}{\text{Payroll hours in month}} \times \text{monthly rate of pay}$$

Employees Leaving the Division or OMB (termination, resignation etc.)

Employees leaving OMB must be paid at the next regular pay day (advanced payroll) their monthly salary or salary for the portion of the month worked as calculated in this chapter. Employees on an hourly rate of pay must be paid on the 10th day of the month (supplemental payroll) following the month of leaving employment for their hours worked or the previous working day if the 10th falls on a weekend or holiday. Payment of unused annual leave, compensatory time, and the ten percent sick leave payout due employees with ten consecutive years of state service will be made on the 10th of the month (supplemental payroll) following the month of leaving employment or the previous working day if the 10th falls on a weekend or holiday.

When an employee retires, resigns, etc. on full or part-time status but does not complete the last month of service, the salary is computed as follows:

- a. Convert all days to hours.
- b. Full-time status formula:

$$\frac{\text{Hours worked} + \text{hours in paid leave status}}{\text{Payroll hours in month}} \times \text{monthly rate of pay}$$

NOTE: To the above total, add accumulated annual leave at the hourly rate and any sick leave payout.

- c. Part-time status formula:

$$\frac{\text{Hours worked} + \text{hours in paid leave status}}{\text{Payroll hours in month}} \times \text{monthly rate of pay}$$

NOTE: To the above total, add accumulated annual leave at the hourly rate and any sick leave payout.

NOTE: Employees may use accumulated annual leave up to and including the resignation date, provided they receive approval from their division director or the OMB director. Annual leave taken prior to and including the resignation date is treated as hours in a paid leave status. Do not pay sick leave as accumulated annual leave.

Employees on Leave of Absence

Employees on leave of absence and who do not complete a month of service are paid as follows:

- a. Convert all days to hours.
- b. Full-time status formula

$$\frac{\text{Hours worked} + \text{hours in a paid leave status}}{\text{Payroll hours in month}} \times \text{monthly rate of pay}$$

- c. Part-time status formula

$$\frac{\text{Hours worked} + \text{hours in a paid leave status}}{\text{Payroll hours in month}} \times \text{monthly rate of pay}$$

Hourly Employees

Hourly employees are paid at the hourly rate that is determined by dividing the monthly rate of pay by 173.33. The formula to determine monthly pay is:

$$\frac{\text{Monthly rate}}{173.33} \times \text{number of hours worked}$$

Monthly time sheets or time cards for hourly employees must be maintained.

Section 6. Payment of Accumulated Annual Leave

Accumulated annual leave at retirement, termination, and resignation is paid at the hourly rate. The hourly rate of pay is determined by dividing the monthly rate by 173.33. An employee may use annual leave up to and including the day of resignation, subject to the approval of the division director or director of OMB. Therefore, accumulated annual leave is only that amount not utilized after the date of resignation, retirement, termination, or transfer to another agency.

Section 7. Payment of Accumulated Sick Leave

Terminating employees with at least 10 continuous years of state employment are entitled to receive a lump sum payment equal to one tenth of the pay attributed to the employee's unused sick leave

(N.D.C.C. § 54-06-14). Payment is at the hourly rate of pay earned by the employee at the time of termination. The formula is as follows:

$$\frac{\text{Total accumulated x 10\% x monthly rate of pay sick leave hours}}{173.33}$$

CHAPTER 7 LEAVE AND EMPLOYEE BENEFITS

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

A probationary or regular employee 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 an employee 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 employees 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 employees may be referred to as the “approving authority” throughout this chapter.

Section 2. Leave

Annual Leave

Employees begin to accrue annual leave from the first day of hire. Annual leave must be earned before it can be taken.

A request for annual leave must be approved by the employee’s supervisor before the employee is authorized to take the leave. A leave request can be denied if the absence would unduly disrupt the operations or services of the workplace or other business-related purpose.

Annual leave may not be advanced. It must be taken in no less than 1/2 hour increments.

The annual leave schedule in relation to length of service is as follows:

<u>Years of Service</u>	<u>Annual Leave Accrued for Full-time Employees</u>
1 st through 3 rd	8 hours per month
4 th through 7 th	10 hours per month
8 th through 12 th	12 hours per month
13 th through 18 th	14 hours per month
19 th and over	16 hours per month

A temporary employee who obtains regular status must be given credit for the length of service as a temporary employee for purposes of determining the annual leave accrual rate, provided there was no break in service beyond one year. Annual leave hours may not be granted to a temporary employee.

An employee accrues leave for being employed for a fraction of a month. The number of annual leave hours earned by an employee for a fraction of a month must be in proportion to the total number of straight time hours the employee actually worked compared to the total number of normal working hours in the month.

An employee who leaves employment and is rehired within three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate.

An employee may not be paid for unused annual leave while the employee remains in the service of the agency except for the following reasons:

- a. The employee takes a long-term leave of absence.
- b. The employee goes on educational leave.
- c. The employee moves to temporary employment.
- d. Human Resource Management Services (HRMS) approves a written request from a division for an exception to this section for a business-related reason.

When an employee transfers from one agency to another, the employee must be paid for the difference in hours between what the employee has accumulated and the number of hours the receiving agency will accept. When an employee is leaving the service of the State, the employee must be paid for all accrued hours of annual leave.

An employee will not be charged for leave that was previously granted on a day when the agency is subsequently closed due to emergency or inclement weather conditions.

An employee can carry over a maximum of 240 hours of accrued annual leave beyond April thirtieth of each year.

A probationary or regular employee who is absent from work in a paid leave status continues to earn fringe benefits, including annual and sick leave.

Sick Leave

Employees begin to earn eight hours of sick leave each month of full-time employment with no maximum accumulations from the first day of employment. Sick leave must be earned before it can be taken.

An employee accrues sick leave for being employed for a fraction of a month. The number of sick leave hours earned by an employee for a fraction of a month must be in proportion to the total number

of straight time hours the employee actually worked compared to the total number of working hours in a month.

Sick leave must be taken in no less than ½ hour increments. All requests for sick leave must be approved by the supervisor.

Sick leave may be used by an employee within the following parameters:

- a. The employee is ill or injured and is unable to work.
- b. The employee has an appointment for the diagnosis or treatment of a medically related condition.
- c. The employee wishes to attend to the needs of the employee's eligible family members who are ill or to assist them in obtaining other services related to their health or well-being. (N.D. Admin. Code § 4-07-13-07)
 - 1) Sick leave used for these purposes may not exceed eighty hours per calendar year.
 - 2) "Eligible family member" means the employee's spouse, parent (natural, adoptive, foster, or stepparent), child (natural, adoptive, foster, or stepchild), or any other family member who is financially or legally dependent upon the employee or who resides with the employee for the purpose of the employee providing care to the family member.
- d. The employee may take up to 6 weeks of accrued sick leave within the first 6 months following birth or adoption of a child. (N.D.C.C. § 54-06-14.5).
- e. The employee may use up to 12 weeks of accrued sick leave in a 12 month period to care for a child, spouse, or parent with a serious health condition. Serious Health Condition means a disabling physical or mental illness, injury, impairment, or condition involving inpatient care or outpatient care requiring continuing treatment by a health care provider. (N.D.C.C. § 54-52.4-03).
- f. The employee may use sick leave for the following situations relating to domestic violence, a sex offense, stalking, or terrorizing (N.D.C.C § 54-06-14.6):
 - 1) Seek legal or law enforcement assistance
 - 2) Seek treatment by a health care provider for physical or mental injuries of employee or immediate family member
 - 3) Obtain or assist an immediate family member in obtaining services from a domestic violence shelter, rape crisis center, or other social service program
 - 4) Obtain or assist an immediate family member in obtaining mental health counseling
 - 5) Participate in safety planning, temporary or permanent relocation or take other actions to increase the safety of the employee or employee's family members
 - 6) Immediate family member means spouse, parent, child, or sibling.
 - 7) At the discretion of the employee's supervisor, the sick leave hours may be limited to forty hours per calendar year.
- g. The employee is participating in an employee assistance program.

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

within two years must be credited with the amount of sick leave hours the employee had accumulated at the time of departure, less any amount for which the employee had subsequently been paid.

An employee with at least ten continuous years of state employment, who leaves state employment, is entitled to a lump sum payment equal to one-tenth of the pay attributed to the employee's unused sick leave accrued under this section. An employee's years of state employment must be deemed continuous if the employee's work is terminated because of a reduction-in-force and the employee is reinstated within two years, or if the employee is placed on voluntary leave status without pay and the leave lasts no longer than two years for educational purposes, or one year for any other voluntary leave without pay. Employees retiring from state employment may also be able to convert their sick leave balance to retirement service credit.

State Leave Sharing Program

Employees may donate annual and sick leave to other state employees. Employees may also receive donated leave. Employees requesting shared leave must use the leave donation request form, SFN 58960.

Terms used in the section:

- a. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term includes foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.
- b. "Relative of the employee" is limited to the spouse, child, stepchild, grandchild, grandparent, or parent of an employee.
- c. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.
- d. "State employee" means a permanent employee with over six months of continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.

Annual Leave Sharing (N.D.C.C. § 54-06-14.1)

A state employee may donate annual leave to another state employee who is suffering or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.

A state employee is eligible to receive shared leave pursuant to the following conditions:

- a. The division director determines that the employee meets the criteria described in this section.
- b. The employee has abided by state policies regarding the use of annual leave.

- c. The employee's use of shared leave, including both annual and sick leave, does not exceed four months in any twelve-month period.

A state employee may donate annual leave to another state employee only pursuant to the following conditions:

- a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory time off due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature, and involves the employee, a relative of the employee, or a household member of the employee.
- b. The condition has caused, or is likely to cause, the receiving employee to go on leave without pay or terminate employment.
- c. The donating employee donates leave in full-hour increments and retains a leave balance of at least forty hours.

The division director shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

Donated annual leave is transferable between employees in different state entities.

One hour of donated annual leave must be regarded as one hour of shared leave for the recipient.

Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.

All forms of paid leave available for use by the recipient must be used prior to using shared leave.

Any shared leave not used by the recipient during each occurrence as determined by the division director may be retained by the recipient.

All donated leave must be given voluntarily. No state employee may be coerced, threatened, intimidated, or financially induced into donating annual leave for purposes of the leave sharing program.

Sick Leave Sharing (N.D.C.C. § 54-06-14.2)

Terms used in this section:

- a. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.
- b. "State employee" means a permanent employee with over six months of continuous service with the State. It does not include employees in probationary status or employees on temporary or other limited term appointments.

A state employee may donate sick leave to another state employee who is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.

A state employee may be eligible to receive shared leave pursuant to the following conditions:

- a. The division director determines that the employee meets the criteria described in this section.
- b. The employee has abided by state policies regarding the use of sick leave.
- c. The employee's use of shared leave, including both sick and annual leave, does not exceed four months in any twelve-month period.

A state employee may donate sick leave to another state employee only pursuant to the following conditions:

- a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory leave due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature;
- b. The condition has caused, or likely to cause, the receiving employee to go on leave without pay or terminate employment; and
- c. The employee may not donate more than five percent of the employee's accrued leave hours, and all leave must be donated in full-hour increments.

The division director shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the employee's condition.

Donated sick leave is transferable between employees in different state entities.

One hour of donated sick leave must be regarded as one hour of shared leave for the recipient.

Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.

All forms of paid leave available for use by the recipient must be used prior to using shared leave.

Any shared leave not used by the recipient during each occurrence as determined by the division director may be retained by the recipient.

All donated leave must be given voluntarily. No state employee may be coerced, threatened, intimidated, or financially induced into donating sick leave for purposes of the leave sharing program.

Funeral Leave

Funeral leave is an approved leave of absence, with pay, of up to twenty-four working hours, provided to an employee to attend or make arrangements for a funeral, as a result of a death in the employee's family or in the family of an employee's spouse.

Funeral leave is not considered annual or sick leave. The leave may be granted even if the absence interferes with the normal operations of the agency.

Family means husband, wife, son, daughter, father, mother, stepparents, brother, sister, grandparents, grandchildren, stepchildren, foster parents, foster children, daughter-in-law, son-in-law, brother-in-law, and sister-in-law of the employee and employee spouse.

Honor Guard Leave

Honor guard leave is the approved absence from work, with pay, for up to twenty-four working hours per calendar year for an employee to participate as an honor guard for a funeral service of a veteran.

Honor guard means an individual with an essential ceremonial role in the funeral service of a veteran. An essential ceremonial role includes being a member of the flag bearers, a member of the flag folding team, a member of the firing party, the bugler, or the honor guard captain.

Honor Guard leave is not considered annual or sick leave. The leave may be granted even if the absence interferes with the normal operations of the agency.

Holidays

Employees are given the following ten statutory holidays:

- a. January 1, New Year's Day
- b. The 3rd Monday of January, Martin Luther King Jr. Day
- c. The 3rd Monday in February, President's Day
- d. The Friday preceding Easter Sunday, Good Friday
- e. The last Monday in May, Memorial Day
- f. July 4, Independence Day
- g. The 1st Monday in September, Labor Day
- h. November 11, Veteran's Day
- i. The 4th Thursday of November, Thanksgiving Day
- j. December 25, Christmas Day

If the holiday falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, is observed as a holiday.

State offices close at noon on December 24. This is an office closure, not a holiday. Noon closure only applies on December 24 if it falls on a Monday through Thursday.

An employee who occupies a part-time regular position must accrue holiday hours proportionately.

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

Jury and Witness Leave

Employees 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 employee received from the court for jury duty service must be deducted from the employee's regular pay. However, if an employee is on authorized annual leave while performing jury duty, the employee may retain the fee paid by the court and the employee's pay may not be reduced.

Employees 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 employee must be paid the employee's regular rate of compensation for time spent as a witness. In this circumstance, the employee is not considered on leave.

An employee may retain a witness fee paid by a party only when each of the following applies:

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

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

Organ or Bone Marrow Donation Leave

A division director may grant a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow. An employee 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 Program section. If an employee does not receive the full amount of leave needed for the donation, the division director may grant a paid leave of absence for the remainder of the leave up to the maximum total of twenty days. The division director 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 employee is otherwise eligible.

Leave Without Pay

Leave without pay is an approved leave of absence from work without pay and may be granted to an employee who has maintained a satisfactory service record. Annual and sick leave do not accrue during leave without pay, but employees 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 employee and division director. Leave without pay may not be granted for more than one year. Should an employee fail to return to work at the expiration of the leave, the employee may be terminated unless other arrangements have been made.

Disaster Service Volunteer Leave

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 employee 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 employee, 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 an employee 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 employee is otherwise eligible.

Emergency Service Volunteer Leave

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 employee 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 an employee to provide voluntary emergency services. An employee on leave under this section is not deemed to be an employee 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 employee is otherwise eligible.

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

Military Leave

State employees who are members of the National Guard or Armed Forces Reserve shall be subject to call to service by the President of the United States, or are volunteers for service when ordered by proper authority to active noncivilian employment, are entitled to a leave of absence from such civil service for the period of such active service without loss of status or efficiency rating.

To be eligible, employees must be in the continuous employ of the State for ninety days immediately preceding the leave of absence; they shall receive twenty workdays each calendar year without loss of pay.

Any leave of absence necessitated by a full or partial mobilization of the reserve and National Guard or emergency state active duty, must be without loss of pay for the first thirty days thereof less any other paid leave of absence which may have been granted during the calendar year pursuant to this section. If leave is required for weekend, daily, or hourly periods of drill for military training on a day in which the employee is scheduled to work, the employee must be given the option of time off with a concurrent loss of pay for the period missed or must be given an opportunity to reschedule the work period so that the period of training occurs during time off from work without loss of status or efficiency rating.

An employee who within ninety days after receiving a discharge other than dishonorable from active non civilian service, and who is not physically or otherwise incapacitated to perform the duties of the position formally held by the employee, applies for the position held by the person at the time of entering such active service, must be given such position or one of like seniority, status, and pay, and is immune from discharge from said position except for cause, as defined by the North Dakota Department of Veterans' Affairs for a period of one year after entering upon the duties of the person's civilian position. If an individual is not reemployed or discharged within one year without cause, he or she has the right to appeal to the Department of Veterans' Affairs under such rules and regulations as the administrative committee on veterans' affairs may promulgate. If the North Dakota Department of Veterans' Affairs finds that such person was not reemployed or was discharged within one year without cause, it may order the division director to comply with the provisions of this chapter.

Workers' Compensation and Leave

Employees who are receiving workers' compensation benefits can use either their accumulated sick or annual leave or leave without pay during the time they are unable to work.

An employee who has used all their leave benefits, or who has elected not to use their accrued leave benefits, will be placed on leave without pay status for the remainder of the period that the employee is unable to work. An employee may remain on a leave without pay status for a time period of two years.

Employees who elect to use leave while receiving workers' compensation benefits must be paid by the employee's agency an amount equal to the difference between the employee's regular base salary and the amount the employee receives from workers' compensation while the employee is on leave.

Section 3. Group Benefit Programs

All group benefit programs are administered by the North Dakota Public Employees Retirement System (NDPERS). Additional information about each of the benefit plans can be obtained from the NDPERS website (<http://www.nd.gov/ndpers/active-members/index.html>). To enroll in any of the benefits below, employees should go to the Member Self Service portal (<http://www.nd.gov/ndpers/perslink-mss/perslink-mss-info.html>) on the NDPERS website and enroll in the programs they wish to participate in. If employees need additional assistance, they may contact the NDPERS office through the website or by calling 701-328-3900 or toll free at 1-800-803-7377.

Health Insurance (<http://www.nd.gov/ndpers/insurance-plans/group-health.html>)

Employees may participate in a health insurance program. Employees can obtain single or family coverage with the premium paid for by the State.

To obtain health insurance coverage, employees must work at least 20 hours per week for at least 20 weeks per year in a regularly funded position. Coverage for new employees begins the month following the month employment began.

Health coverage will end one month after the date of termination. A past employee and their covered dependents may apply for COBRA coverage within sixty days of their separation of employment if:

- a. The employee and their covered dependents were enrolled in the PERS health plan.
- b. Neither the employee nor their covered dependents are eligible for Medicare.

Past employees will have the option to continue COBRA coverage for a maximum period of 18 months. COBRA coverage will be terminated if:

- a. The employee or their covered dependents become eligible for an employer sponsored health plan.
- b. The employee or their eligible dependents become eligible for Medicare.

Life Insurance (<http://www.nd.gov/ndpers/insurance-plans/group-life.html>)

Employees can participate in a group life insurance plan if they are 18 years of age and working at least 20 hours per week for at least 20 weeks per year. The State pays for a basic insurance benefit of thirty-five hundred dollars (\$3,500) per employee. Employees can buy additional insurance coverage for themselves and their dependents through a payroll deduction.

Retirement (<http://www.nd.gov/ndpers/retirement-plans/db-plan.html>)

Employees are eligible to become members of the North Dakota Public Employees Retirement System if at the time of initial employment they work at least 20 hours per week for 20 weeks or more per year and are 18 years of age or older. The State contributes in the employees' behalf an amount equal to seven and twelve-hundredths percent; the employer also contributes four percent of the employee contribution of seven percent; and one and fourteen hundredths percent for the retiree health credit program. Employees become vested in thirty-six months.

Effective October 1, 2013, through July 31, 2017, all state employees eligible for retirement plan participation will be enrolled in the Defined Benefit Hybrid Retirement Plan and will have the option to elect to participate in the Defined Contribution Retirement Plan within the first six months of employment. NDPERS will send election option information specific to the member to the member's home address. For more information go to the NDPERS website (<http://www.nd.gov/ndpers/retirement-plans/dc-plan-1452.html>).

Deferred Compensation (<http://www.nd.gov/ndpers/deferred-comp/index.html>)

Employees may defer tax free a portion of their income in a voluntary State deferred compensation supplementary retirement plan. The amount of income the employee elects to defer plus any earnings are subject to income tax only when the employee or their beneficiary receive a distribution at the time of death, retirement, disability, or termination of employment.

For more information on the NDPERS Deferred Compensation Plan, employees should go to <http://www.nd.gov/ndpers/forms-and-publications/publications/defcomp.pdf> on the NDPERS website.

FlexComp (<http://www.nd.gov/ndpers/flexcomp/index.html>)

An employee may pay for eligible insurance payments, medical expenses, and dependent care expenses with pre-tax dollars through payroll deductions. Employees should refer to the NDPERS website (<http://www.nd.gov/ndpers/forms-and-publications/publications/enrollment-guide.pdf#page=16>) for a full description of those items that qualify for the Flex Comp plan.

The flex comp plan runs from January 1 through December 31 of each year. However, there is a 2-1/2 month “grace period” for participants enrolled in a Medical Spending Reimbursement account; claims incurred between January 1 and March 15 of the new plan year can be reimbursed out of any account balance remaining from the previous plan year. Employees must indicate on the FlexComp Reimbursement materials they submit to the flex comp provider if they want medical care expenses incurred during the grace period reimbursed from any amount available in the prior plan year.

The deadline to file medical and dependent care claims is April 30. Any amounts remaining in these accounts after April 30 are forfeited.

All records and information pertaining to an employee’s medical and dependent reimbursement information are confidential and not public record.

Dental Insurance (<http://www.nd.gov/ndpers/insurance-plans/dental-plan.html>)

Employees can participate in a group dental insurance plan for themselves and their dependents if they are eighteen years of age and work twenty hours per week for at least twenty weeks per year. The coverage would be effective the first of the month following the employment date.

Vision Insurance (<http://www.nd.gov/ndpers/insurance-plans/vision-plan.html>)

Employees can participate in a group vision insurance plan for themselves and their dependents if they are eighteen years of age and work at least twenty hours per week for at least twenty weeks per year. The coverage would be effective the first of the month following the employment date.

Long-Term Care Insurance (<http://unuminfo.com/ndpers/index.aspx>)

Employees can participate in a long term care insurance plan for themselves and their spouse if they are eighteen years of age and work twenty hours per week for twenty or more weeks. Employees can apply anytime for this coverage and must be medically underwritten. Coverage would be effective the first day following the month of the insurance carrier’s approval.

PERSLink MSS

PERSLink MSS provides employees with on-line access to benefit information, the ability to complete benefit enrollments and changes, as well as updating personal profile instead of completing paper forms and submitting to NDPERS. This will also include Annual Enrollment elections.

The following tools and features are available through PERSLink MSS:

Personal Profile	<ul style="list-style-type: none">• View your personal information on record at NDPERS• Update your name/marital status• Update your address, telephone numbers and email
NDPERS Plans	<ul style="list-style-type: none">• Displays all the NDPERS benefit plans you are enrolled in or are eligible to enroll in• View Plan Details Document• View Plan Details Video• Provides link to the individual plans: Plans enrolled in: view details of the plan as well as updates to Plan enrollment• Plans eligible to enroll in: On-line enrollment application
Member Account Balance	<ul style="list-style-type: none">• Provides a direct link to Retirement Plan member account balance details
Benefits Estimates	<ul style="list-style-type: none">• Request an official retirement benefit estimate from NDPERS• Calculate a benefit estimate on-line• View benefit estimate you performed
Service Credit Purchase	<ul style="list-style-type: none">• Request an official service purchase cost from NDPERS• Calculate a service purchase cost estimate on-line• View any service purchase contracts you have.

Employees can complete their benefit plan enrollment(s) using PERSLink Member Self Service (MSS)! In three steps: 1) Go to NDPERS website; 2) Set up your ND Login ID; and 3) Log into MSS and see what you can do.

Section 4. Travel and Per Diem

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

CHAPTER 8
EMPLOYEE ASSISTANCE PROGRAM, FAMILY & MEDICAL LEAVE, AND GINA
(For definitions used in this chapter, see Chapter 1, Section 4)

Section 1. Employee Assistance Program

The policy of OMB is to assist, in a strictly confidential manner, employees who are experiencing problems relating to mental or emotional illness, marital or family stress, chemical dependency, and other concerns such that the employee's job performance is or may be impaired.

The Employee Assistance Program (EAP) is available to all OMB regular employees and their immediate family members (spouse and children living in the same household as the employee and dependent children attending school). An employee or employee's immediate family member may contact an EAP provider directly for assistance. Self-referrals are strongly encouraged.

Four Parts of the Employee Assistance Program

- a. Identification by the supervisor or employee of a personal problem that continually or repeatedly adversely affects the employee's job performance.
- b. Referral by the supervisor or employee to an agency professionally competent to diagnose the problem.
- c. Diagnosis and treatment by professionals who are trained to properly diagnose and treat problems.
- d. Follow-up as needed to monitor the employee and performance.

OMB recognizes that a wide range of problems can have an effect on an employee's job performance. When an employee cannot overcome such problems independently and an effect on job performance is apparent, supervisory assistance may serve either as the motivation or guidance by which such problems can be resolved so the employee's job performance returns to an acceptable level.

It is the responsibility of the supervisor to detect and attempt to correct deteriorating or unsatisfactory job performance. Supervisors must focus on job expectations and work behavior – not on details of an employee's personal problems. A supervisor should refer an employee to the EAP after supervisory efforts have failed to bring about improved performance and a personal problem may be the cause.

In general, supervisors follow five steps in making a referral:

- a. Observe a pattern of continuing or repeated job deficiency.
- b. Document observable, verifiable job-related facts in a manner that is objective, fair, and consistent.
- c. Confront the employee about the work performance or behavior problems in a constructive way.
- d. Refer the employee to the EAP, either informally or by a formal referral memo.
- e. Determine if the employee is performing at an acceptable level.

An employee is not required to accept a supervisor's referral to the EAP. However, an employee's continued unsatisfactory job performance may result in discipline up to and including termination of employment.

No employee will have job security or promotional opportunities jeopardized by coming forward to request counseling or EAP assistance.

In instances where it is necessary, leave will be granted in accordance with established leave procedures. Since employee job performance can be affected by the problems of an employee's spouse or other dependents, the program is also available for the families of employees. In cases where direct family involvement is required for effective treatment, use of available sick leave, annual leave, or leave of absence without pay to address family concerns may be allowed by the division director.

The division director shall determine whether the employee's employment is ultimately retained or terminated based on job performance. Personnel records of action taken or a decision to terminate employment must be related to unsatisfactory job performance and/or work behavior and not to personal problems. Great care must be exercised to ensure personal problems are handled discreetly and that all documentation in the personnel files refers to efforts to resolve job performance or work behavior.

Section 2. Family and Medical Leave. This policy is not an exhaustive description of state and federal law on Family and Medical Leave. **Employees should consult HRMS to review state and federal laws for specific requirements, rights, obligations, and definitions.**

Employees are eligible for family and medical leave under the State and Federal Family and Medical Leave Acts (FMLA) 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. If eligible, employees must be provided up to twelve weeks of unpaid leave, except as noted in (f) below, during a 12-month period for the following reasons:

- a. The birth or care of the employee's newborn 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 employee's spouse, son, daughter, or parent, but not parent-in-law, who has a serious health condition. (Son or daughter is defined as a biological, adopted, or foster child; a step-child; and a legal ward under the age of 18 or, if older than 18, incapable of self care because of a mental or physical disability at the time the leave is requested.)
- d. A serious health condition that makes the employee unable to work or perform any one of the essential functions of the employee's job. "Serious health condition" means 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 employee from performing the functions of the job or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment or incapacity due to pregnancy or a chronic condition. Other conditions may meet the definition of continuing treatment. (29 CFR §825.113)

- e. A qualifying exigency arising from the fact that the employee's spouse, child, or parent is a covered military member on covered active duty or has been notified of impending call or order to covered active duty in the armed forces. "Qualifying exigency" includes short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities that may arise out of active duty or call to active duty status and upon which the employer and employee agree. Leave for a qualifying exigency applies when a member of the regular or reserved components of the armed forces is deployed to a foreign country under a call or order of active duty.
- f. Care for a military servicemember with a serious injury or illness. Note: An employee who is the spouse, parent, child, or next of kin of a current member of the armed forces (including National Guard or Reserves) 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 leave for any qualifying reason during the 12-month period. Family members may also take 26 weeks of leave for a veteran who is undergoing medical treatment, recuperation, or therapy and who was a servicemember 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.

The leave entitlement period will be determined by the rolling 12-month period measured backward from the date an employee uses any leave under this section. Any FMLA leave used during this 12-month period will be deducted from the total allowable under this section. The 12 months of employment with the State need not be consecutive. For information on separate stints of employment, reference 29 C.F.R. §825.110. For reason (f) above, leave begins counting on the date an employee first takes leave to care for the military servicemember.

OMB requires an employee to first use any accrued compensatory time, then accrued paid and donated leave before authorized unpaid family and medical leave. For an employee's own serious health condition, the employee must first use any accrued sick leave, then any accrued compensatory time, annual leave, and donated leave, in this order, before unpaid authorized family and medical leave. For any reason other than an employee's own serious health condition, employees must first use any family leave (see note below) and then use any accrued compensatory time, annual leave and donated leave, in this order. Employees who have exhausted the applicable types of paid leave will be provided unpaid leave to fulfill the authorized period of family and medical leave. (Note: The family leave referred to is the eighty hours of paid leave granted to eligible employees under N.D.C.C. § 54-52.4-03.)

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

Employees who are provided with unpaid leave during any authorized family and medical leave period will continue to have health plan premiums paid by OMB during the leave period. Employees in an unpaid leave status will not accrue annual or sick leave during the period of unpaid leave.

Request for Leave. An employee requesting leave must complete SFN 58548, Employee Request for Family Medical Leave, and submit it to the supervisor at least 30 days in advance of when the leave is to begin if the leave is foreseeable or as soon as is practicable for unforeseen leave. An employee

requesting leave for a qualifying exigency must complete Form WH-384, Certification of Qualifying Exigency for Military Family Leave (www.dol.gov/whd/forms/WH-384.pdf). An employee requesting leave to care for a military servicemember with a serious injury or illness must complete Form WH-385, Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (www.dol.gov/whd/forms/WH-385.pdf). The supervisor must then forward the request form to the division director for approval.

Notices. The division director must provide the employee, within five business days of the request for leave or of becoming aware of the leave, if feasible, with a copy of the Form WH-381, Notice of Eligibility and Rights & Responsibilities (www.dol.gov/whd/forms/WH-381.pdf), which will detail specific entitlements and responsibilities of the employee and explain any consequences of failure to meet those obligations. The division director will decide whether a condition qualifies as a serious health condition. Upon approval of requested information, the division director will provide the employee with Form WH-382, Designation Notice (www.dol.gov/whd/forms/WH-382.pdf), and attach a list of the essential functions of the employee's position if a fitness for duty to return to work is required.

Medical and Other Certification. The division director must, within five business days of a request for family and medical leave, notify the employee of the requirement of a medical certification from a health care provider. This is required to verify that the family and medical leave request is necessary for the employee's own serious health condition, to care for a family member's serious health condition, or to care for a covered servicemember with a serious injury or illness.

The employee must provide the medical certification within 15 calendar days of OMB's request unless it is not practicable under the particular circumstances in spite of the employee's good faith efforts. The certification is required on either of the U.S. Department of Labor's forms: WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition (www.dol.gov/whd/forms/WH-380-E.pdf), or WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition (www.dol.gov/whd/forms/WH-380-F.pdf), as applicable.

If an incomplete or insufficient certification is returned, the division director will give the employee seven calendar days to correct any deficiency by notifying the employee in writing what additional information is necessary. If the deficiencies are not corrected, the division director may deny the FMLA leave. The division director must notify the employee at the time the certification is requested of the consequences of the employee's failure to provide adequate certification.

An OMB representative may contact the health care provider, after written employee authorization, to clarify or authenticate the medical certification (whether initial or recertification) after the employee has been given an opportunity to cure any deficiencies. The OMB representative who contacts the employee's health care provider must be a health care practitioner, a human resource professional, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health care provider.

Failure to provide the requested certification in a timely manner or cooperate or release relevant information may result in denial of the leave until it is provided. If an employee refuses to provide a certification, the leave request may be denied and the employee may be disciplined.

An employee may also be required to submit to additional examinations by a physician selected and paid for by OMB. If the minimum duration of the employee's incapacity specified on a certification

furnished by the health care provider is more than 30 days, OMB will not request recertification until the minimum duration has passed unless:

- a. The employee requests a leave extension;
- b. Circumstances described by the previous certification have changed significantly (e.g. duration of the illness, the nature of the illness, complications); or
- c. OMB receives information that casts doubt upon the continuing validity of the certification.

If family and medical leave is taken intermittently or on a reduced work schedule basis, OMB will not request recertification in less than the minimum period specified, on the certification as necessary for such leave unless conditions a, b, or c above are met.

Any recertification requested by OMB shall be at the employee's expense. A division director may not require second or third opinions on recertification.

A division director may require certification that an employee's family member is on active military duty by requesting the covered military member's active duty orders the first time the employee requests exigency leave.

An employee who requests an extension of family medical leave due to the continuation, recurrence or onset of his/her own serious health condition or of the serious health condition of the employee's spouse, child, or parent, must, within two business days, submit a written request for an extension to the supervisor. This written request must be made as soon as the employee realizes that she/he will not be able to return at the expiration of the leave period.

Intermittent Leave. When medically necessary, employees may take family and medical leave intermittently or on a reduced work schedule basis for their own serious health condition, the serious health condition of a family member, or to care for a covered servicemember with a serious injury or illness. Leave must be taken in no less than half-hour increments. Employees are required to cooperate with OMB to arrange reduced work schedules or intermittent leave to minimize disruption of business operations. To better serve the employee and agency, intermittent leave may require the employee to go from full-time to part-time status or to be temporarily transferred to an alternative position of which the employee qualifies and of equal pay and benefits. Once leave is no longer needed, the employee would return to the original or equivalent job.

Qualifying exigency leave may be taken intermittently or on a reduced leave schedule.

Leave for the birth of a healthy child or placement by adoption or foster care of a healthy child may be taken intermittently or on a reduced leave schedule if the division director agrees.

Return from Leave. If an employee wishes to return to work prior to the expiration of a family medical leave of absence, a notification must be given to the employee's supervisor within two business days prior to the employee's planned return. However, the supervisor, with the concurrence of the employee, may allow the employee to return to work immediately.

An employee 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; such notice must be included in the

Designation Notice. If an employee fails to submit the required fitness for duty certification, the employee's restoration to his or her position may be delayed or denied.

Upon return from leave, an employee who is not designated as a "key employee" 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 leave period. Whether a position is an "equivalent position" is the decision of the division director.

An employee designated as a "key employee" may not be provided restoration rights upon return from leave. Individuals designated as "key employees" under FMLA will be notified of such designation at or before the time FMLA leave commences. If the restoration of a key employee causes "substantial and grievous economic injury" to the employing agency, reinstatement upon returning from leave may not occur.

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

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

If OMB experiences a reduction-in-force during the employee's absence and the employee would have lost his/her position, the employee retains any rights under OMB's Reduction in Force policy but may not be eligible for reinstatement under the Family and Medical Leave Acts.

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

Employees who provide day-to-day care or financial support to a child can be a parent, even if they have no biological or legal relationship with a child; they may nonetheless stand in loco parentis to the child and be entitled to 12 weeks of leave for the birth, adoption, or foster care of a healthy child or a child with a serious health condition. Loco parentis refers to a person who has put himself/herself in the position of a lawful parent by assuming the obligations without going through legal adoption. This would include same-sex partners, grandparents, step-parents, aunts, uncles, and lesbian, gay, bisexual, or transgender families. OMB may require the employee to provide reasonable documentation or a statement of family relationship.

If a dispute arises as to the eligibility for leave under this section, the designation of paid leave as qualifying under this section, or the appropriateness of notice requirement of less than 30 days, an employee may submit additional information to the approving authority for further consideration.

Section 3. The Genetic Information Nondiscrimination Act. OMB strictly prohibits discrimination based on genetic information. OMB does not collect, consider or make employment or benefit decisions based on genetic information. OMB does not use genetic information or genetic testing to identify individuals (applicants or employees) 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 employees of OMB will not be required to undergo any genetic testing or reveal genetic information to OMB.

Supervisors will ensure the following safe harbor notice is attached to the medical certification when OMB requests medical information to certify an employee'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 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 an employee's immediate family member has a serious health condition.

CHAPTER 9 AWARDS AND RECOGNITION

Section 1. Employee Suggestion Incentive Program

All employees, except state agency heads, administrators, and management level supervisors are eligible to participate in a State Employee Suggestion Incentive Program.

A state employee may submit a recommendation or proposal to reduce expenditures within their agency to the Suggestion Incentive Committee. After review by the Suggestion Incentive Committee, the OMB director shall review the suggestion and determine if it is capable of implementation.

If the OMB director approves the employee's recommendation or proposal to reduce expenditures for implementation, the employee is entitled to twenty percent of any savings realized, up to a maximum of four thousand dollars, for the twelve-month time period from the time that the proposed change is instituted. The agency savings must relate directly to the employee's proposed change.

Section 2. Service Award Program

An employee is entitled to a service award if they have completed three, five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty years, and every five-year increment thereafter of employment with the State. If an employee leaves state government and then returns, they again begin to accumulate time. That time must be added to the employee's previous service and applied to any future service award.

The type of awards given to employees is as follows:

- a. Three years – certificate or plaque and a gift not to exceed twenty-five dollars
- b. Five years – certificate or plaque and a gift not to exceed fifty dollars
- c. Ten years – certificate or plaque and a gift not to exceed one hundred dollars
- d. Fifteen years – certificate or plaque and a gift not to exceed one hundred fifty dollars
- e. Twenty years – certificate or plaque and a gift not to exceed two hundred dollars
- f. Twenty-five years – certificate or plaque with a reproduced letter from the governor and a gift not to exceed two hundred fifty dollars
- g. Thirty years – certificate or plaque and a gift not to exceed a value of three hundred dollars
- h. Thirty-five years – certificate or plaque with a reproduced letter from the governor and a gift not to exceed a value of three hundred fifty dollars
- i. Forty years – certificate or plaque and a gift not to exceed a value of four hundred dollars
- j. Forty-five years – certificate or plaque and a gift not to exceed a value of four hundred fifty dollars

- k. Fifty years and every five-year increment thereafter – certificate or plaque and a gift not to exceed a value of five hundred dollars

Section 3. Retirement Awards

A retirement award shall be provided to an employee who has a minimum of fifteen years of state service and who has not been previously recognized by the State as follows:

- a. A retirement certificate signed by the governor and/or a plaque
- b. A gift with a value not to exceed two hundred dollars

A farewell party may be provided upon agreement of the employee and agency. Retirement awards may be withheld if there are documented problems with an employee's performance.

An employee may not receive cash as part of a service or retirement award program. An agency may provide a gift certificate.

(N.D. Admin. Code ch. 4-07-18)

Section 4. Employee Appreciation

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

Employees, supervisors, managers, directors, and customers can use the form to “shine the spotlight” on any employee you see making a positive difference at work.

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

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 employees in order to enhance the knowledge, skills, and abilities of employees and ensure maximum productivity. Employees 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 employee of their division. Training opportunities may include college coursework leading to a degree, special training, or a single course of study intended to assist an employee to perform a task or to enhance job performance.

Division directors will determine which programs are considered to be job-related. This determination will be made based on the content of the training program and its value to improving the ability of an employee 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 employee 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 employees must be applied.

Section 3. Tuition Reimbursement.

Division directors may, within budgetary constraints, provide reimbursement of tuition and fees to regular employees 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 an employee 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 employee cannot receive reimbursement for the same course more than once without the approval from the employee's division director.

An employee 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 in order to accommodate more employees. If it is anticipated that requests will exceed budget availability, the division director may reduce the amount awarded each employee 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.

An employee who resigns or is terminated while attending a course previously approved for reimbursement will not receive reimbursement.

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

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 employees and customers.

Each OMB employee 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 employees 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.

Employee Responsibilities

- a. Maintain a clean, orderly, and safe work area that is free from hazards at all times.
- b. Perform work in a safe manner so as not to jeopardize oneself or others in the work area.
- c. Use protective equipment and safe materials.
- d. 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.
- e. 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.
- f. Report immediately to the supervisor and the Risk Management Division all accidents, injuries, or near-miss incidents that the employee is involved in or has witnessed or any dangerous condition of which the employee becomes aware.
- g. Complete designated safety training.
- h. Follow division-specific Safe Operating Policies and Procedures that are relevant to workplace operations.
- i. Complete Risk Management's training and policy review and acknowledgements annually.

Supervisor/Manager Responsibilities

- a. Inform employees of the safest manner in which to perform work and of safety policies.

- b. Ensure that all employees are provided with current material that addresses the Emergency Plan, Evacuation Procedures, Procedures for Life Safety Threats, and other general safety issues.
- c. Ensure that all employees receive periodic training in Evacuation Procedures, Procedures for Life Safety Threats, and other general safety issues.
- d. Ensure that all protective equipment and safe materials are used.
- e. Enforce all safety and accident prevention policies and procedures.
- f. Regularly inspect worksites, materials, and equipment to ensure work areas are free of hazards; take immediate corrective action to eliminate hazardous conditions.
- g. Investigate and report immediately to the division director and the Risk Management Division any accidents, injuries, or near-miss incidents.
- h. 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 employee.

Division Director Responsibilities

- a. Abide by supervisor responsibilities for employees who report directly to the division director.
- b. 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.
- c. Ensure employees are informed of the safest manner in which to perform work and that they use protective equipment and safe materials.
- d. Ensure a report of any accidents, injuries, or near-miss incidents has been filed with the Risk Management Division.
- e. Ensure division-specific Safe Operating Policies and Procedures relevant to the division's workplace are established and enforced.

Section 2. Use of Cellular Phones and Handheld Communication Devices

Safety is a primary concern when employees are driving a State Fleet vehicle or their privately-owned vehicle on State business. In order to reduce the risks associated with distracted driving, it is the policy of OMB to prohibit the use of cell phones (including hands free) or any other mobile devices while operating a motor vehicle on state business. This restriction includes answering or making phone calls, engaging in phone conversations, reading or responding to e-mails and text messages, and accessing the Internet. These restrictions do not apply to emergency calls, or brief calls that are identified and designated as necessary to fulfill critical job responsibilities.

Section 3. Communicable/Contagious Diseases

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

Supervisors are encouraged to remind employees 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 an employee with a communicable disease.

OMB will not discriminate against any job applicant or employee based on the individual having a communicable disease. Applicants and employees 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

An employee'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 employee. Dissemination of information concerning an individual with a communicable disease will occur as provided under Federal and State law.

Knowledge of an employee's medical condition is restricted in the workplace to:

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

Employees should contact their supervisor or division director if they have questions or concerns about contagious, infectious illness at work.

The supervisor or division director should contact Human Resource Management Services (HRMS) or Risk Management if employees 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, employees 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 employees 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 employees 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. Employees at State Surplus Property should follow the internal evacuation procedure for that location.

Section 6. Mail/Package Handling Safety

All employees who open envelopes and packages will receive training to identify and address suspicious mail. Employees 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 employee should not attempt clean up of any suspicious material or independently attempt to identify the material. The employee’s division director or supervisor should be promptly notified. The employee 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 or warning is phoned in, the person receiving the call should, to the degree possible, attempt to find out as much information as possible, using the Bomb Threat Report Form (SFN 51502) which has been issued to all employees to be retained by their telephones.

- a) Do not hang up; let the caller terminate the call.
- b) Get as much information from the caller as obtainable.
- c) Get the exact time of the call.
- d) Get the Caller ID (if phone has a Caller ID).
- e) Write down the exact words the caller used.

- f) Attempt to answer all the questions listed on the Bomb Threat Report as accurately and completely as possible.
- g) Estimate the sex, race, and age of the caller.
- h) Be alert to the nature/character of the caller's voice.
- i) Listen for background noises.

Upon notification of a bomb threat or bomb emergency, personnel shall report the call **immediately to 9-911**. The recommendation to evacuate the structure/location during a bomb threat is the responsibility of the fire department personnel, police, building staff, or management.

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, the Office of Management and Budget 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 N.D.C.C. 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 employees 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 employees must receive training on the online Incident Reporting System, and existing employees must annually receive reminders or training on these requirements. More information is available in the Risk Management Website.

All employees must be informed of workers compensation benefits and how to file a claim. If an injured employee 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 found on the WSI website: <http://www.workforcesafety.com/library/Documents/forms/claims/FROIfom.pdf>. When a First Report of Injury form is submitted to WSI, an employee 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 Risk Management Division (RMD) of the Office of Management and Budget (OMB) administers 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.

Employees may elect to be treated by a different provider by completing a Designated Medical Provider form and returning it to the Workers Compensation Coordinator/Contact prior to the occurrence of an injury.

To obtain more information about the Designated Medical Program, view any of the following resources:

- [RMWCP DMP Manual](#)
- [Designated Medical Provider Form](#)
- [State Selected Designated Medical Providers](#)
- [Benefits of an Effective Workers Compensation Designated Medical Provider Program \(brochure\)](#)

Section 11. Return-to-Work

OMB's goal is to eliminate the need for an employee to miss work due to a work-related injury. Every reasonable effort will be made for all employees to keep working throughout their recovery. If a physician determines that an employee must not work in any capacity, OMB will strive to return the employee to gainful employment as soon as medically possible. Transitional or modified work will be utilized as necessary.

Transitional job descriptions will be developed. Supervisors will look first to keep the injured employee within their division. If that is not possible, transitional work may be identified within another OMB division. OMB wants employees to return to work and will ensure the employee is following medical instructions outlined for appropriate care. Transitional work shall be offered in writing through a Transitional Job Offer form.

A transitional job description will be provided which stipulates the **essential functions** of the transitional job and take into consideration the nature of the illness and/or injury. Once a medical work release is received, contact will be made with the attending provider to discuss the proposed transitional job. If the medical provider approves the transitional job but the employee declines the transitional job offer, the job offer will be terminated and wage-loss benefits will be forfeited.

Under no circumstances will an injured employee be requested to perform any activity that exceeds his/her on or off the job capabilities or restrictions. Hours and working conditions will be modified by the supervisor as necessary for the continued safety of the injured employee until he/she can successfully return to normal duties. It is the responsibility of the injured employee to report to their supervisor any transitional work conditions that they feel are unsafe or that may hinder their recovery.

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 employees 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.

Supervisors shall ensure that employees 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 supervisor.

Appendix A

ERGONOMICS PROGRAM

OMB has developed an Ergonomics Program to educate and train employees 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 employees through ergonomic education, training and re-engineering work areas. OMB encourages employees to notify their supervisor of any ergonomic concerns.

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

1. Understand proper body mechanics, posture, manual lifting techniques, work station design, etc. to safely complete their job duties.
2. Identify and report physical/environmental discomforts to their supervisor.

Upon initial hire (within the first week), an initial ergonomic assessment will be completed by the supervisor 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 an employee requirement, it's also the best way OMB can help prevent you from experiencing unnecessary discomfort and pain.

CHAPTER 12

PERFORMANCE MANAGEMENT

Section 1. Introduction

Performance management is an ongoing communication process between an employee and the supervisor that involves establishing clear expectations and understanding about:

- a. The essential job functions the employee is expected to perform.
- b. How the employee's job contributes to the goals of the division/agency.
- c. What doing the job well means in concrete terms.
- d. How the employee and supervisor will work together to sustain, improve, or build on existing employee performance.
- e. How job performance will be measured.
- f. Identifying barriers to performance and removing them.

Employee performance evaluation is a process or system to develop employees and assist them in achieving the goals of the agency. All employees of the OMB should receive both periodic, formal reviews as well as ongoing, informal evaluations of their performance.

Section 2. Performance Evaluation

Performance evaluation is used to:

- a. Measure actual performance against expected performance.
- b. Provide an opportunity for the employee and the supervisor to exchange ideas and feelings about job performance thereby fostering mutual understanding and commitment regarding expectations and goals.
- c. Improve productivity by providing constructive feedback.
- d. Identify employee training and development needs and plan for career growth.
- e. Support alignment of division/agency and employee goals.
- f. Provide the basis for a variety of personnel decisions, such as salary recommendations, promotion, training, retraining, demotion, reduction-in-force, dismissal, selection and recruitment.
- g. Provide legal protection against lawsuits for wrongful termination.

Roles of Employee, Supervisors and Director

OMB's performance management program entails distinct responsibilities for employees, supervisors, and directors.

OMB requires of employees the willingness to:

- a. Participate in defining critical job duties.
- b. Carefully plan what needs to be done.
- c. Be accountable and responsible for completing agreed-upon tasks.
- d. Seek improvement by engaging in a continuous process of performance review including a positive response to direction or instruction.

In return, employees can expect:

- a. To know up front the duties, expectations, priorities and associated rewards of the position.
- b. To have adequate job training and orientation.
- c. To be reviewed objectively and fairly.
- d. To have rewards distributed equitably and in accordance with State Legislative and Governor's mandates.
- e. To be treated with dignity.

OMB requires of supervisors the willingness to:

- a. Develop and communicate objectives/standards (work to be accomplished) and goals for the unit/division.
- b. Delegate authority to the employee to carry out the steps necessary to do the work.
- c. Share knowledge about the job with the employee, e.g. by explaining, demonstrating, coaching.
- d. Observe, identify, and measure what duties the employee is doing on the job.
- e. Allow employees to participate in defining critical job duties.
- f. Establish achievable standards of performance.
- g. Engage in the formal work review summary as well as more informal progress reviews.
- h. Update job descriptions as appropriate with current and clearly written task and standard statements

OMB requires from its directors the willingness to:

- a. Establish and communicate the division/agency's mission, goals and objectives for each biennium and intermittently, as required.
- b. Develop human resources by making training and other job skill enhancement available as funds permit.
- c. Delegate authority to supervisors and support them within the framework of official agency policies.
- d. Provide adequate physical resources.
- e. Establish acceptable behavior standards

Responsibility for Performance Review

Each division director shall adopt and use a program to provide for the development and management of the performance of each employee in a classified position. Supervisors are responsible for reviewing the performance of their assigned employees.

Each supervisor is required to use a performance evaluation form. The evaluation form must utilize at least three levels of performance such as "exceeds standards", "meets standards," and "needs improvement" for each element evaluated. This is necessary in order for regular employees to be eligible to receive any employee pay bonuses awarded by the agency. (N.D.C.C. § 54-06-30) A model form is available through HRMS.

The supervisor must inform each employee in a classified position of the responsibilities assigned to the employee's position and of the level of performance needed to successfully perform the work. Written performance reviews may be done at any time, but should follow a general or pre-established schedule, and must be done at least annually for each regular employee. The evaluation must be signed by the supervisor. If desired, the supervisor's manager may provide written comments or approval of performance evaluations. The employee must be given a copy of the evaluation, and is encouraged to include any written comments concerning the performance evaluation. After the employee has reviewed the evaluation with all comments and signed it, the original form with any employee and supervisory comments must become a part of the employee's personnel file. (N.D. Admin. Code Ch. 4-07-10)

Supervisors shall evaluate a probationary employee's performance and notify the employee and payroll in writing at the completion of the initial probationary period that the employee has satisfactorily completed the probationary period, that the probationary period has been extended, or that the employee has been dismissed. (N.D. Admin. Code § 4-07-06-06) Failure to notify the employee within 15 working days of completion of the probationary period means that the employee has successfully completed the probationary period. In cases of termination of employment or probation extension, detailed documentation is required.

Generally a new employee will have an evaluation prior to completion of the six-month probationary period. The requirement for an annual review becomes effective with the employee attaining regular

status. A supervisor could opt to use the initial hire date as the annual review date; however, this would require a second six-month evaluation to achieve the annual review schedule.

A supervisor may extend an initial period of probation only if there is a documented work-related reason for doing so. The supervisor shall notify the employee in writing no later than 15 working days of the completion of the initial probationary period regarding the decision to extend, the reason for the extension, and the length of the extension. A probation period extension beyond the initial probationary period may not exceed six months. Upon the successful completion of the extended probationary period, the supervisor must conduct a performance evaluation and the employee must be notified. The notification must be accomplished no later than fifteen working days of completion of the extended probationary period. A copy of this notice must be retained in the employee's official personnel file. (N.D. Admin. Code Ch. 4-07-06)

A review of temporary employee performance is at the discretion of the supervisor and division director. If a temporary employee is employed a year or longer, the employee's performance should be evaluated annually based on performance expectations. Feedback during the evaluation process should include direction for improvement regarding any unsatisfactory performance issues.

Section 3. Performance Improvement Planning

When overall performance is not satisfactory, supervisors must discuss with employees areas where improvement is needed and how the employee and supervisor will accomplish the improvements. Using an appropriate performance improvement plan document, supervisors must list key performance areas that need correction and identify specific activities and target dates required of the employee to meet the improvement. Model forms are available through HRMS.

Failure on the part of probationary and regular employees to maintain satisfactory performance may result in disciplinary action up to and including termination from employment.

Section 4. Evaluation Review Process

The basis for evaluating performance is the duties, objectives, performance measures, and goals that are established early in the period under review. Goals, objectives, and measurements should be reviewed with the employee at the beginning of the review period to ensure that the employee understands and agrees with all performance criteria. All new employees should be given goals, objectives, and measurements within 90 days of beginning employment. To complete the annual evaluation, supervisors are required to condense the documentation and observations about the work of the employee over the last 12 months and summarize it on an evaluation form.

In preparing for the performance evaluation, supervisors may require employees to complete and submit a self-evaluation prior to actual performance evaluation. The employee self-evaluation assists employees in documenting highlights of their performance related to the stated measurements, performance factors, and goals. It also serves as a useful tool in improving communication between managers/supervisors and employees. It is recommended that the self-evaluation form be submitted to the supervisor at least one week prior to the evaluation meeting. The self-evaluation form should be taken into consideration by the manager/supervisor when completing the employee's performance appraisal and conducting the performance appraisal meeting.

After careful consideration of the employee's performance a number will be assigned as a rating. There are some common errors that a supervisor can make in rating a performance evaluation. Supervisors should avoid these:

- a. Central tendency - Rating everyone at or near the middle of the scale to avoid the need to justify a higher or lower level.
- b. Positive/negative leniency - Rating higher or lower than the employee deserves because you want to motivate them to do better or because you think there is always room for improvement.
- c. Halo (or horns) effect - A single favorable or unfavorable incident colors the evaluator's judgment of the employee's overall performance.
- d. Recency effect - A recent event colors the perception of the employee's performance for the entire period.
- e. Similar to me - The tendency to rate employees similar to yourself higher and those not similar lower.

The ratings should be supported with written comments. The following are steps that the supervisor may take to minimize the risk of violating legal requirements.

- a. Accurately and truly reflect the employee's actual level of performance.
- b. Encompass the entire review period and reflect the performance variations.
- c. Make sure that the employee's job duties and results measurements are based on the actual requirements as stated on the JDQ or job description and other documented assignments and goals.
- d. Be cautious in making subjective judgments.
- e. Stick to facts that can be documented.
- f. Don't base performance ratings on prejudice or discrimination.
- g. Avoid evaluation of personality traits and attitudes.
- h. Be consistent with disciplinary or other performance records.

Prior to the performance review meeting with the employee, the supervisor should notify the employee of the date and time of the review and give the employee a copy of the appraisal form that includes the supervisor's written comments to date. The supervisor and the employee should discuss any changes to the supervisor's comments during their review meeting.

Employees who disagree with their evaluation may request a higher-level management review within 30 days from the review date. The objections should be documented in writing and submitted to the next higher-level supervisor. The next higher-level supervisor must respond to the employee in writing. The document submitted by the employee and the response from the next higher-level supervisor must be placed in the employee's personnel file with the evaluation.

Performance evaluations are not grievable beyond the next higher-level supervisor, unless the performance results in a demotion, dismissal or other reduction of benefits or pay; or the employee alleges discrimination in the review (N.D. Admin. Code § 4-07-20-02). OMB employees must use OMB's Internal Grievance Procedure (See Chapter 14 of this manual).

An employee may provide written comments, explanations or rebuttal to any portion of the performance evaluation by either writing on the space provided or submitting a memorandum to the employee's supervisor or manager. Employee comments and documents will be included with the evaluation form in the employee's personnel file.

Section 5. Changing the Evaluation Month

Supervisors may change an employee's annual evaluation month when (a) an employee is promoted, (b) an employee is transferred to a new unit or division, (c) a new supervisor is hired, or (d) a supervisor prefers to conduct all employee performance reviews during the same month each year. To comply with the annual evaluation requirement set forth in N.D. Admin. Code § 4-07-10-04, supervisors must document the rationale for the change, notify the employee, and place a copy of the documentation in the employee's personnel file.

Section 6. Informal Performance/Progress Reviews

It is important for supervisors to provide frequent informal performance/progress review of employees on an ongoing basis focusing on current issues. Informal performance/progress review may or may not be documented. The supervisor will use discretion on whether issues should be included in the employee's formal evaluation. If satisfactory performance is achieved through an ongoing informal process, instances of unsatisfactory performance may be corrected in a timely manner and may never appear on a formal evaluation form. In certain cases, this may be the most effective method of achieving high organizational performance. However, if satisfactory performance is not achieved, instances of unsatisfactory performance must be reflected in the formal performance evaluation.

Section 7. Basic Work Expectations

The basic work expectations are required from all employees at all levels. Basic work expectations are either rated acceptable or unacceptable. OMB requires its employees to adhere to the following basic work expectations:

- a. Adhere to current laws, rules, regulations, policies, procedures, practices, and professional ethics.
- b. Work as part of the team.
- c. Maintain a positive attitude.
- d. Use courtesy and respect in all interactions.
- e. Maintain a well-organized work area with a business-like appearance.
- f. Use effective communication techniques to develop and maintain positive and effective working relationships with other employees and customers.

- g. Be responsive to requests for service and assistance from all customers.
- h. Maintain confidentiality.
- i. Remain flexible in work assignments and schedule.
- j. Actively pursue professional growth and development opportunities.

CHAPTER 13 DISCIPLINE

Section 1. Definitions

“Cause” means conduct or factors related to a regular employee’s job duties, job performance, or working relationships that is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.

“Demotion” means a reassignment of an employee, for cause, to a position in a lower class that would result in either a reduction of an employee’s base salary or a reduction in the pay grade assigned the position’s class that would prevent receiving subsequent pay adjustments; or an involuntary reassignment, for reasons other than disciplinary, from one classified position to another classified position with a lower pay grade.

“Dismissal” means an involuntary termination of a regular employee’s employment.

“Progressive discipline” means the disciplinary actions imposed to correct a regular employee’s behavior, 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.

“Regular employee” means a person who has completed the probationary period and who is or was in a position classified by Human Resource Management Services (HRMS) at the time of the disciplinary action.

“Suspension with pay” means a forced paid leave of absence.

“Working days” means Monday through Friday exclusive of holidays, unless otherwise defined by the agency.

Section 2. Discipline of Probationary and Temporary Employees

An employee on probation may be separated at will from employment and may be terminated without cause and without progressive discipline. The employee may not grieve or appeal a lawful separation. The division director shall notify the employee of the separation in writing. However, a supervisor may, in the supervisor’s sole discretion, use progressive discipline to correct the job performance of a probationary employee.

Temporary employees may be terminated without cause and without progressive discipline.

However, a supervisor may, in the supervisor’s sole discretion, use progressive discipline to correct the job performance of temporary employees.

Even where “cause” is not required, supervisors are encouraged to document the reasons for imposing discipline in terms of “cause.” Where the supervisor’s reason for imposing discipline cannot be documented to fit within the broad definition of “cause” used in this chapter, the supervisor is urged to consult HRMS prior to taking disciplinary action.

Section 3. Discipline of Regular Employees

An employee who has completed the probationary period may be disciplined only for cause.

Progressive discipline must be used to correct a regular employee's job performance problems or for a violation of rules or standards unless an infraction or a violation of a serious nature is committed including but not limited to insubordination, theft, falsification of pay records, or assaulting or threatening to harm a supervisor, coworker, or client, and for which the imposition of less severe disciplinary action would be inappropriate.

The types of discipline discussed below are those typically used in a progressive discipline process. However, each discipline must be based on the seriousness of the infraction. Progressive discipline does not assure a sequential application of more severe discipline steps. For example, when an infraction or a violation of a serious nature is committed and for which the imposition of less severe disciplinary action would be inappropriate, more severe discipline may be administered.

Verbal Warning

A verbal warning is the least severe disciplinary action. It is intended to influence an employee toward improved performance. The verbal warning should describe the problem, the impact on others, the performance or behavior expectations, and the consequences if the performance problem or misconduct continues or the offense occurs again. Verbal warnings must be documented in supervisor's notes or records. It is recommended that a copy of the oral warning documentation be given to the employee.

Written Warning

A written warning is a more severe disciplinary action than a verbal warning. A written warning may be appropriate when a pattern in unacceptable performance is recognized or misconduct has occurred. A written warning may also be appropriate when, in the judgment of a manager or supervisor in consultation with a division director, an employee's poor performance or job related behavior warrants more than a verbal warning. The written warning should contain the following:

- a. The date of the warning.
- b. A detailed description of the misconduct or inadequate performance including dates.
- c. The effect on the work place or the policy, administrative rule, or practice that was violated.
- d. A statement that if the conduct is repeated the employee will be disciplined again more severely. A final warning may also be included in the written warning that specifies that termination will result if another infraction occurs.
- e. A signature line for the manager or supervisor.
- f. A statement at the end such as "I have read and understand this document. I am aware that it is being placed in my personnel file. I acknowledge that my signature does not necessarily indicate agreement with the contents of this document. I understand that I have the right to attach a response if I so choose."

- g. A signature line for the employee or a signature of a witness, if the employee refuses to sign.

The supervisor must ensure that a copy of the written warning is placed in the employee's personnel file.

A written warning may also include a formal "Action Plan," depending upon the nature and severity of the offense. A formal action plan may include the following elements:

- a. The steps to follow in order to correct the problem or meet the desired level of performance, attendance, or behavior.
- b. Any commitments of assistance or support that the manager or supervisor has made.
- c. The time frame to be followed in achieving the goal of improved performance, attendance, or behavior.
- d. The consequences that will occur if the performance, attendance, or behavior is not improved within the specified time frame.

If the employee's performance or conduct has not reached the expected level, further discipline should be administered unless there are mitigating circumstances.

Suspension of Employment With or Without Pay

The division director must determine if the suspension is with or without pay and the length of suspension. It must be consistent in severity with the seriousness of the employee's poor performance or behavior infraction. A suspension of employment action must follow the pre-action notice procedure as required in Section 4 of this chapter. A suspension without pay may not exceed 30 calendar days. If the suspended employee 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 imposed in good faith for infractions of workplace conduct rules.

A suspension with pay may be used during an investigation or pending disciplinary action and does not require pre-action notice.

Termination 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. Termination from employment may be used earlier in the disciplinary process when it is necessary and consistent with the performance or behavioral infraction. Termination from employment action requires the supervisor to carry out the pre-action process as described in Section 4 of this chapter.

Occasionally, managers may wish to take other actions to impose discipline such as demotion, job reassignment or job re-structuring. Demotions require the supervisor to follow the pre-action process as described in Section 4 of this chapter. Please note that job reassignment and job restructuring generally occur for reasons other than discipline.

Section 4. Pre-Action Notice

Prior to suspending, demoting, or terminating a classified employee who has successfully completed the probationary period, the division director shall give the employee a written notice of the reasons for such action, an explanation of the allegations and the supporting evidence, and provide an opportunity for the employee to respond.

The written notice of the reasons and explanation of the allegations must include:

- a. A statement of the division director's intent to take disciplinary action that may result in demotion, suspension without pay, or termination of the employee.
- b. An explanation of the allegations against the employee; citing behavior, dates or occurrences, witnesses, and other evidence.
- c. A statement of specific policy, administrative rule or practice violations or a statement citing what work expectation was violated and how the employee would have known of the work expectation.
- d. Notice that the employee may provide the division director with evidence, explanation, or other information in writing which contradicts the allegations and evidence.
- e. Notice that the employee will have five working days to provide the written response.
- f. Notice of the employee's status (to continue working or placement on leave of absence with pay) until the final decision is made.
- g. A statement that a written notice of the final action taken will be provided to the employee.
- h. A statement at the end such as "I have read and understand this document. I am aware that it is being placed in my personnel file. I acknowledge that my signature does not necessarily indicate agreement with the contents of this document. I understand that I have the right to attach a response if I so choose."
- i. A signature line for the employee to acknowledge receipt or a witness to acknowledge the employee's receipt and/or refusal to sign.

Any time a pre-action notice is sent to an employee via US Postal service, an Affidavit of Service by Mail form must be used to document the date the letter was sent to the employee.

Opportunity to Respond:

The employee must be given no less than five working days following receipt of the notice in which to respond in writing to the allegations. The employee must be given reasonable access to the employee's personnel file and all information upon which the allegations are based. If necessary, the employee may be placed on a leave of absence with pay during this time. If the employee makes a written request for extension of time in which to answer the allegations, management may grant a reasonable extension on the condition that the employee agrees to take the extension as a leave of absence without pay. Extensions with pay must be approved by the division director. The employee's response to the allegations must be in writing and will be placed in the employee's personnel file.

Final Notice:

After reviewing all the evidence, including all written information provided by the employee, the division director must determine whether or not to take the proposed disciplinary action. Once the division director makes a final decision on the basis that there are reasonable grounds to believe that the allegation(s) against the employee are true and support the proposed action, the division director must notify the employee, in writing, of the final disciplinary action to be taken. The division director shall determine the method of delivery that best guarantees the employee's receipt of the final action notice. Any time a final notice is sent to an employee via US Postal service, an Affidavit of Service by Mail form must be used to document the date the letter was sent to the employee.

When an employee wishes to resign rather than being dismissed, it is at the employee's discretion and at no time will be recommended by management. If an employee tenders a resignation prior to the implementation of a pre-action process, the employee's personnel record should show that the employee resigned. However, if a pre-action process is already under way and the employee decides to resign, documentation of the pre-action process must remain in the personnel file.

The employee may contest the disciplinary action through the OMB internal grievance procedure found in chapter 14. In cases of termination, the employee may request that the agency agree to waive the internal agency grievance procedure and appeal directly through HRMS to the Office of Administrative Hearings. The final action notice must contain either of the following:

- a. If the final disciplinary action is less than demotion, suspension without pay, or termination, a statement must be made explaining the reasons for reducing the intended disciplinary action. Any stipulations that may apply to continued employment must also be stated.
- b. If the final disciplinary 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 grieve the decision in accordance with Chapter 14 of this manual.
- c. A statement at the end such as "I have read and understand this document. I am aware that it is being placed in my personnel file. I acknowledge that my signature does not necessarily indicate agreement with the contents of this document. I understand that I have the right to attach a response if I so choose."
- d. A signature line for the employee to acknowledge receipt or a witness to acknowledge the employee's receipt and/or refusal to sign.

Section 5. Authority to Discipline

Authority to discipline on all levels described is granted to division directors and the OMB director. Suspension, demotion, or termination actions may not be delegated below the level of division director.

Division directors shall ensure their employees are aware of the specific person who has disciplinary authority and that all individuals involved in a disciplinary process are fully aware of the procedures to be followed.

Section 6. Division Director, Manager, and Supervisor Responsibilities

Supervisor's responsibilities related to disciplinary actions include documenting incidents of poor performance, inappropriate workplace behavior, and violation of laws, rules and policies; documenting meetings with employees regarding their poor performance, inappropriate workplace behavior, and violation of laws, rules, and policies; establishing and monitoring adherence to plans for corrective action; drafting letters to employees and other documentation of disciplinary actions, investigating poor work performance and other job-related problems, and ascertaining and carrying out proper procedures. HRMS can assist supervisors in these and other discipline-related matters. Supervisors are encouraged to consult early and as often as needed with HRMS, since the proper handling of disciplinary actions may impact OMB's ability to adequately address workplace issues.

Division directors, managers and supervisors are responsible to ensure full documentation and review of all disciplinary actions. Documentation must always be completed at the time of the action.

Supervisors may maintain a supervisory file containing written notes or documentation of an employee's performance separate from the official personnel file. If contents of the supervisory file are used for disciplinary purposes, such content must be made a permanent part of the employee's personnel file.

No documents that address an employee's character or performance may be placed in the personnel file unless the employee has had the opportunity to read the material. The employee must acknowledge that the employee has read the material by signing the actual copy to be filed or an attachment to the actual copy to be filed, with the understanding that the signature merely signifies that the employee has read the material to be filed and does not necessarily indicate agreement with its content. If the employee refuses to sign the copy to be filed, the division director or the OMB director shall indicate on the copy 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 division director or the OMB director 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 personnel file.

The employee has the right to answer any material filed and any answer must be attached to the file copy. If any material is found to be without merit or unfounded through a grievance procedure, it must be immediately removed from the file and may not be used in any subsequent actions or proceedings against the employee.

No anonymous letters or materials may be placed in the employee's personnel file.

CHAPTER 14
GRIEVANCE COMPLAINTS - FILING AND APPEAL PROCEDURES
(Complaints, Employer Actions, Classification Actions, Discrimination)

Section 1. Scope of Chapter.

Introduction

It is the policy of the Office of Management and Budget (OMB) to provide a means for employees to have their complaints or grievances heard and resolved at the level of supervision most directly associated with the employee's work unit.

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

An employee of OMB may file a work-related complaint or grievance by following the procedures outlined in this chapter. If the complaint or grievance is not appealable to HRMS, the decision of the OMB director is final.

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

Definitions

(For definitions in addition to those stated in this chapter, see Chapter 1, Section 4 and Chapter 13, Section 1.)

"Alternative Dispute Resolution," also referred to as mediation, means a method of resolving disputes, outside the grievance process, that involves a neutral person to assist in identifying issues, developing options, and arriving at a resolution.

"Complaint" is defined as an unsatisfactory work-related situation or circumstance an employee may experience and for which a reasonable resolution may exist. The term "complaint" may be used interchangeably with the term "Grievance."

"Date of Notice" or "Date of Service" or "Service" means 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.

"Demotion" means a reassignment of an employee, for cause, to a position in a lower class that would result in either a reduction of an employee's base salary or a reduction in the pay grade assigned the position's class that would prevent receiving subsequent pay adjustments; or an involuntary reassignment, for reasons other than disciplinary, from one classified position to another classified position with a lower pay grade.

"Dismissal" means an involuntary termination of employment.

"Discrimination in employment" is defined as an act that results in adverse or unequal treatment of individuals because of race, color, religion, sex, national origin, age, sexual orientation, 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.

"Director" means the director of OMB.

"Division director" means the director of a specifically identified division within OMB.

"Employer action" is defined as an action involving demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment.

"Manager" means an employee who is responsible for assigning work to others, determining the standards of performance, and providing formal evaluations of other's work performance. The term "manager" may be used interchangeably with the term "supervisor."

"Misconduct" means the disregard of any reasonable order, organizational standard of behavior or condition of employment with which the employer expects the employee to comply.

"Regular employee" means a person who has completed the probationary period and who is in a position classified by HRMS.

"Reprisal" means an unfavorable employment-related action taken against an applicant or employee by an appointing authority for appealing to HRMS or the State Personnel Board; for exercising the employee's rights under the Public Employees Relations Act; for testifying before a legislative committee; or for requesting timely assistance under the employee assistance program.

"Working day" includes Monday through Friday, and excludes weekends and holidays.

Employee Responsibilities

The OMB internal grievance procedure applies to all OMB employees. Employees are responsible for complying with the procedures in this chapter and all additional procedures required by N.D. Admin. Code for filing a grievance or appeal.

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

HRMS is available to answer questions employees may have about the formal grievance procedure.

Supervisor/Manager Responsibilities

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

Retaliation against an employee for filing a grievance is prohibited.

Alternative Dispute Resolution or Mediation

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

During the time period when employees involved in a dispute are utilizing mediation, the time limits of the internal grievance procedure must be suspended. If a resolution is not agreed to by the participants at the conclusion of the mediation process, the time limits of the OMB 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.

Extension of Time Limits

The steps comprising the internal grievance process contain time limitations. An employee should be allowed a reasonable amount of time to process a grievance during regular working hours without loss of pay. Occasionally, situations will arise beyond the control of management or the employee that will prevent compliance with the time limitations. Time limitations may be extended for employees by the division director. Time limitations may be extended for the division director by the OMB director. Requests for extensions must be received by the division director or OMB director prior to the established deadline.

Section 2. Grievance Procedure

Grievance Procedure for Non-Employer Actions

There are three steps to the grievance process involving grievances that are not a result of an employer action. Grievances are to proceed on to each successive step until the employee is satisfied with the outcome at that step, does not file a timely appeal, or exhausts the right to file a grievance or appeal.

Failure on the part of the employee to grieve OMB's 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.

Grievances involving claimed discriminatory or retaliatory behavior or actions may be brought to the division director. If the actions complained of involve the division director, grievances may be brought directly to the director of OMB. The employee may also contact HRMS for assistance with the issue. If needed, a workplace investigation may be conducted within thirty days.

Step One:

An employee who has a complaint that is not the result of an employer action should first discuss it with their immediate supervisor. If discussion and any subsequent action the supervisor may take fails to effectively resolve the complaint, the employee may file a written grievance, using an Employee Grievance form (SFN 18409), with the immediate supervisor within five working days of the incident

or grievable action, or within five working days after informal discussion with the immediate supervisor has failed to resolve the grievance.

The supervisor, upon receipt of a written grievance, shall inform the division director and must respond to the complaint in writing within five working days of receipt of the written complaint from the employee.

Step Two:

The employee, if dissatisfied with the response or action taken by the immediate supervisor, or if no response is received from the immediate supervisor within the five working day response period, may continue the formal grievance process by filing the grievance form with the division director within five working days from receipt of the immediate supervisor's response or within five working days following the supervisor's response period if no response is received. The division director must receive the continued grievance within five working days from the date of service of notice of the immediate supervisor's response. The date of service is 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 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 division director, upon receipt of a written grievance, shall notify the employee's supervisor of receipt of the complaint, properly review the issue, and give a written response to the employee within ten working days of receipt of the grievance from the employee.

Step Three:

The employee, if dissatisfied with the response or action taken by the division director, or if no response is received from the division director within the ten working day response period, may continue the formal grievance process by filing the grievance form with the director of OMB within five working days from receipt of the division director's response or within five working days following the division director's response period if no response is received. The OMB director must receive the continued grievance within five working days from the date of service of notice of the division director's response. The date of service is 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 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 director of OMB or designee shall notify the employee's division director of receipt of the grievance, properly review the issue, and give a final written response to the employee within 15 working days of receipt of the complaint from the employee. The final written decision of the OMB director or designee ends the OMB internal grievance procedure.

Grievance Procedure for Employer Actions

Eligible Employees:

- a. A regular employee is given a formal opportunity to respond prior to a decision to dismiss, demote or suspend the employee without pay. Following the final decision in the pre-action process, the

employee may grieve the decision through the internal grievance process. A regular employee may appeal the OMB director's or designee's decision as outlined in step three of this section.

- b. An employee in probationary status may grieve a decision to dismiss, demote or suspend the employee without pay through the internal grievance process. A probationary employee may not appeal a lawful dismissal, demotion or suspension without pay from employment through HRMS except claims of discrimination or reprisal.
- c. A non-classified employee may grieve a decision to dismiss, demote or suspend the employee without pay through the internal grievance procedure. Grievances and appeals from non-classified employees are not appealable beyond the OMB director or designee except claims of reprisal.

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

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

Step One:

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

Failure to begin the procedure within time limitations may cause the employee to lose the right to appeal to HRMS and have their appeal heard by the Office of Administrative Hearings (OAH).

The OMB director or designee will acknowledge receipt of the grievance within five working days of receipt and request from the person who made the decision a complete copy of all material upon which the decision was based, including any written information provided to management by the employee prior to the decision. Generally, the information considered will be confined to the information submitted. However, the OMB 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 OMB director or designee will notify the employee within five working days of the receipt of the complaint that an investigation will be conducted. The OMB director or designee will provide a response to the employee within 15 working days following completion of the investigation report.

If it is determined that an investigation is not needed, the OMB 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 OMB director or designee will issue a written response to the employee within 15 working days of OMB's receipt of the written supporting

information. The written decision of the OMB director or designee ends the OMB internal grievance procedure.

Step Three:

The employee, if dissatisfied with the response or action taken by the OMB director or designee or if no response is received from the OMB 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 service of the notice of results of the agency grievance procedure or within 15 working days from the date of the waiver of the grievance procedure. The date of service of the 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. OMB 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 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 OMB director and division director.

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

Section 3. Waiver of the Agency Grievance Process

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

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

Performance Evaluation Appeals

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

Limitations for Reduction-In-Force Appeals

A regular employee may appeal a reduction-in-force only on the basis that the agency did not utilize a uniform comparative analysis as required by N.D. Admin. Code § 4-07-11-03 or that the reduction-in-force was conducted in a discriminatory manner that would violate the State's policy against discrimination as stated in N.D.C.C. § 14-02.4-01.

A former regular employee who was reduced in force may appeal a denial of reemployment only on the basis that the agency did not follow N.D. Admin. Code § 4-07-11-07 or that the denial of reemployment was conducted in a discriminatory manner that would violate the State's policy against discrimination as stated in N.D.C.C. § 14-02.4-01. The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with the agency.

Section 4. Classification and Pay Grade Appeals

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

Section 5. Discrimination Grievance Procedure for Applicants

OMB has established a grievance procedure for applicants for positions in OMB and employee applicants who believe they have been subject to discrimination on the basis of race, color, religion, sex, national origin, age, genetics, the presence of any mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer, or political opinions or affiliations. These procedures are a supplement to the rules in 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 OMB 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 OMB 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 OMB director or designee ends the OMB administrative complaint process. Grievances from applicants for nonclassified jobs are not appealable beyond the OMB director or designee.

If an applicant for a classified job is dissatisfied with the decision of the OMB director or designee, or if no response is received from the 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 Employees Who Are Applicants

For employees who are applicants, unless a waiver is obtained in accordance with Section 3 of this chapter, the complaint must be filed with the director of OMB 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 working days of the filing of the complaint that an investigation will be conducted. A response of the OMB director or designee will be provided to the applicant within 15 working days following completion of the investigation report. The decision of the OMB director, or designee ends the OMB administrative complaint process.

If an applicant for a classified job is dissatisfied with the decision of the OMB 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 OMB internal grievance process is obtained in accordance with Section 3 of this chapter, 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 the notice shall be considered to be the date of mailing defined in the Affidavit of Service by Mail, date transmitted by facsimile, or date of hand delivery.

Section 6. Reprisal

Definition

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

Introduction

Acts or threats of reprisal (retaliation) are a violation of OMB 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 employee who seeks assistance from HRMS, the State Personnel Board or through the employee assistance program; files a claim of discrimination, including sexual harassment; exercises rights under the Public Employees Relations Act; or testifies before a legislative committee is prohibited.

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

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

Procedure

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

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

An applicant for a classified position who alleges reprisal may file a grievance with the OMB director. The grievance must be in writing and filed within fifteen working days of the alleged reprisal action. An investigation will be conducted. A response of the OMB 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 OMB director or designee, or if no response is received from the 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.

CHAPTER 15

SEPARATION AND REEMPLOYMENT

Section 1. Definitions

- a. "Agency" means the Office of Management and Budget (OMB).
- b. "Dismissal" means an involuntary termination of a regular employee's employment.
- c. "Employing Unit" means any division or work unit of OMB.
- d. "Expiration of Appointment" means the completion of predetermined, time-limited employment involving emergency, temporary, merit system exempt, special project, or grant positions.
- e. "Outplacement services" means those services OMB may provide separated employees to assist in their search for a new job, if requested by the employee.
- f. "Reduction-in-force" means the loss of employment by a regular employee as a result of a reduction in funding, lack of work, curtailment of work, or reorganization. (N.D. Admin. Code § 4-07-20.1-02[3])
- g. "Regular Employee" means a person who has completed the probationary period and who is or was in a position classified by ND Human Resource Management Services (HRMS) at the time the employer action occurred. (N.D. Admin. Code § 4-07-11-02)
- h. "Resignation" means the employee's voluntary separation from employment.
- i. "Retirement" means the acceptance of a PERS retirement allowance upon termination of employment.
- j. "Separation" means the breaking off of an employment relationship between the employee and the employer.

Section 2. Separation

Notice of separation is generally required in written form to describe or record the ending of an employer-employee relationship.

When an employee, consultant, or contractor terminates his or her relationship with an OMB division, the immediate supervisor must notify all administrators handling the computer and communications accounts used by the worker as soon as the termination is known and must take the following action:

- a. All physical security access codes known by the worker must be deactivated or changed.
- b. All access rights and privileges to restricted areas and information systems must be immediately revoked.

- c. All agency property must be returned, including but not limited to portable computers, library books, documentation, building keys, magnetic access cards, state identification, and credit cards.

The supervisor or payroll contact shall conduct the following activities:

- a. Discuss the status of fringe benefits, including health and life insurances, retirement, deferred compensation, and payments such as annual leave. The supervisor may wish to refer the employee to appropriate resources such as the Public Employees Retirement System and HRMS.
- b. Arrange for the return of agency property as listed above and referred to on the Employee Exit Checklist, SFN 19451.
- c. Explain agency practice regarding references required by future employers for those employees seeking other employment.
- d. Conduct an exit interview. Use this opportunity to explain when the employee can expect to be paid; if there will be a delay securing the final check, explain the reason for the delay.

Section 3. Employee Exit Interview

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

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

- a. The reason why the employee is leaving in an effort so as to retain other employees with satisfactory job performance and reduce turnover.
- b. Any complaint the employee may have regarding unit/agency policy or conditions so that corrective action can be taken if possible, and communication practices within the agency enhanced.
- c. Any difficulties the employee may have had regarding the employee'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 employee's terms and conditions relative to final pay, reemployment, unemployment compensation and other matters relating to separation from employment.

Section 4. Employment Termination Questionnaire

The Employment Termination Questionnaire, SFN 58740, can be obtained from HRMS. The questionnaire should be given to the employee on or before termination and returned to HRMS as soon as possible. Completion of the questionnaire by employees is optional but should be encouraged.

Section 5. Informal Assistance for Employees

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

Section 6. Resignation

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

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

OMB will accept resignations of employees at any time. Employees 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 7. Dismissal

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

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 supervisor, other supervisors, other employees, consumers of services, the employee, other agencies, and examples or statements describing quality and quantity of work may also be necessary or advisable.

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

The supervisor must inform the employee of the appeal process. (See chapter 14 of this manual.)

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

Section 8. Retirement

When notified of a retirement by the employee, supervisors should encourage the employee to contact appropriate resources such as the Public Employees Retirement System as soon as possible to plan for a successful retirement.

Supervisors may also consider making available local training courses or seminars specifically intended for employees 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 9. Reduction-In-Force (RIF)

The decisions of OMB regarding where and how its resources, including its employees, 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:

- a. Determine the division or work unit to be affected by the reduction-in-force.
- b. Determine the number of positions to be reduced and the classification(s) affected.
- c. Review vacant positions within the designated division or work unit and within the designated classification(s) for possible elimination.
- d. Reduce temporary employees performing the same or similar work in the designated division or work unit.
- e. Reduce probationary employees in positions assigned the same classification(s) as those designated for reduction in the designated division or work unit.
- f. Conduct a written reduction-in-force analysis if more than one regular employee 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 employees' 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)

- g. Reduce regular employees in positions selected for reduction through the analysis, providing to affected employees, 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 employee. 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 employee.
- h. 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 employee may be separated from employment due to a reduction-in-force when there are temporary employees in the designated division or work unit performing the same or similar work or when there are probationary employees 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 N.D.C.C § 14-02.4-01 and any Federal civil rights laws.

An employee who was in a classified position that was reduced has the right to file a grievance or appeal in accordance with N.D. Admin. Code § 4-07-20.1-07 on the basis that OMB 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. 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 employees 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:

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

Section 10. 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. 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 employee.
- b. 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).
- c. No more than one year has lapsed since the individual lost employment due to reduction-in-force.
- d. 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 N.D. Admin. Code § 4-07-20.1-07 only on the basis that OMB did not follow N.D. Admin. Code § 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.

EMPLOYMENT TERMINATION QUESTIONNAIRE

ND Office of Management and Budget

SFN 58740 (11/07)

The Office of Management and Budget (OMB) is concerned about and interested in why an employee ends employment with this agency. Reasons for terminating employment generally fall into two broad categories:

- 1) An employee resigns for reasons that have nothing to do with the job or with the agency;
- 2) An employee resigns for reasons growing out of job conditions, employment relationships, agency policies and philosophies, or supervision provided.

OMB's understanding of these reasons can be most helpful in its efforts to develop and maintain good relations with our employees. In view of this, we ask that you please sincerely answer the questions listed below. Your signature on this form is voluntary, and your cooperation in completing the form is appreciated. Please continue your comments on additional sheets of paper if necessary.

QUESTIONS ABOUT YOUR JOB

1. Indicate in which division of OMB you worked:

- | | | |
|---|---|--|
| <input type="checkbox"/> Administration | <input type="checkbox"/> Fiscal | <input type="checkbox"/> Facility Management |
| <input type="checkbox"/> Central Services | <input type="checkbox"/> Human Resource Management Services | <input type="checkbox"/> Risk Management |

2. Indicate how long you were employed by OMB:

- 0-3 Years 4-7 Years 8-12 Years 13-18 Years More than 18 Years

3a. Prioritize the reasons(s) you are leaving your job.

3b. State suggestions on how to make this a better place to work (working conditions, supervision, policies, etc.)

3c. What changes would have made you reconsider and stay?

4. Rate the following benefits provided state employees (check one rating for each of the eight benefits listed below). Note that temporary employees need not fill out this section.

- | | Excellent | Average | Poor | | Excellent | Average | Poor |
|----------------------------|--------------------------|--------------------------|--------------------------|------------------|--------------------------|--------------------------|--------------------------|
| a. Health Insurance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | e. Retirement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Annual Leave (vacation) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | f. Holidays | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Sick Leave | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | g. Rate of Pay | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Life Insurance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | h. Funeral Leave | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

5. How would you like to see the above listed benefits changed or improved? What fringe benefits, if any, would you like to have had which are not available?

6. Did you like your job? Yes No

7. What did you like most about your job? What did you like most about working for your division or OMB?

8. What did you like least about your job? What did you like least about working for your division or OMB?

CHAPTER 16

USE OF ELECTRONIC COMMUNICATION DEVICES

Section 1. Introduction and Purpose

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 smart phones), facsimile (fax) machines, multi-function printers, tablets, mobile computing devices, workstations, video equipment, all computer and network related hardware, software (including e-mail and Internet), and/or peripheral devices. These devices are connected to the State's IT infrastructure and as such, public scrutiny and/or disclosure of usage must not damage the reputation of the State of North Dakota, nor jeopardize the systems' integrity.

OMB's intent is to provide a policy that ensures appropriate use of ECDs by its staff and business contacts. These policies apply to both state owned devices or employee owned devices that are synced or directly attached to the state IT network infrastructure.

North Dakota State government branches and agencies are responsible for developing and administering policies to prevent or detect abuse and reduce legal exposure related to the use of ECDs. Unless exempted by law, all electronic communications shall follow [North Dakota's Open Records Law](#). State ECDs are not part of any employee benefit program.

Section 2. Employees Provided State ECDs or Using Personal ECDs

Many OMB employees have job duties that require access to a desktop or laptop computer. OMB provides these devices 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, smart phones, or tablets.

OMB Division Directors are responsible for determining if a state owned mobile computing device should be provided to an employee or if an employee will be allowed to sync or directly attached a personal mobile computing device to the state's IT infrastructure.

In making that determination, OMB Division Directors must assess the need and cost effectiveness for employees to have a state issued mobile computing device. Each situation should be considered individually and be based on the employee's work or position.

Factors to be considered in determining if an employee should be issued a state-owned mobile device or be permitted to sync or directly attach a personal device to the state's IT infrastructure include, but are not limited to, the following:

- a. The frequency that employees conduct business off-site or away from the office setting and landline phones or radio communication are inaccessible or inefficient.
- b. Communication is required for safety purposes or to respond to emergencies.
- c. The extent to which an employee is required to be in regular or immediate contact with the office when out of the office or after hours.
- d. The extent to which a mobile device will increase an employee's productivity.
- e. The extent to which a mobile device will provide quality customer service and enhance business operations.
- f. The extent to which the position requires mobile email access.
- g. The determination of whether or not the position is exempt or non-exempt under the Fair Labor Standards Act.
- h. A state owned ECD should be used if an employee's work outside the office requires a VPN connection.
- i. If the employee works from home on a part-time or full-time basis.
- j. Any other unique aspects of the position.

Section 3. Authorized Use

OMB's policy is to limit the use of State ECDs to official business. However, users may be permitted to utilize ECDs for personal use, if in compliance with the following terms of this policy:

- a. Does not interfere with the performance of the user's public duties.
- b. Is of nominal cost or value.
- c. Does not create the appearance of impropriety.
- d. Is not for a political or personal commercial purpose.
- e. Is reasonable in time, duration, and frequency.
- f. Makes minimal use of hardware and software resources.
- g. Does not affect the safety of the employee or employee's coworkers.

- h. Uses only software that has been licensed by OMB. Unauthorized downloading of software/shareware is prohibited; ECD's may be audited at any time.

Section 4. 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 in a professional and ethical manner as noted below:

- a. Must not use ECDs to distribute or access content that is harassing, bullying, discriminatory, defamatory, insulting, sexually explicit, offensive or erotic.
- b. 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 networks; approval for the use and distribution of such information must be obtained from the owner/author.
- c. Must limit the use of non-business related "streaming" audio & video (including Internet radio, stock/news tickers, and software such as Weather Bug, etc.) that use significant amounts of the State's bandwidth.
- d. Must not use ECDs for the purposes of probing or hacking.
- e. Must not use ECDs for any illegal activity, gambling, trading in illegal substances, etc.
- f. Must not use ECDs to knowingly download, copy, distribute, store, or use pirated software or data;
- g. 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.
- h. Must not create or distribute a virus or intentionally cause damage to any ECDs or bypass any State virus detection system in place.
- i. Must protect the ECD from theft, damage, abuse or unauthorized use.
- j. Must immediately report suspicious activity or unauthorized access of an ECD.
- k. Must report a lost or stolen ECD immediately.
- l. Must conform to [State procurement policies](#) when making business related purchases using an ECD.

Section 5. Additional Responsibilities of Employees 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. OMB is not responsible for providing antivirus software for personally owned ECDs.

The owner of a personally owned device is responsible for ensuring that data exchanged with OMB is free from viruses and other forms of malware.

The owner of a personally owned ECD is responsible for ensuring that the latest operating system updates are applied, including all applicable security patches.

OMB is not responsible for maintaining, supporting, protecting, replacing or repairing personally owned ECDs.

OMB is not responsible for damage to a personally owned ECD or for any loss of data.

Section 6. Safety Requirements When Using ECDs

OMB's HR policy manual, Chapter 11, Section 2, addresses safety issues when using ECDs.

Section 7. Training

User training on computer security and appropriate usage is required. Security training is available from North Dakota Human Resource Management Services (HRMS) and the Information Technology Department through the PeopleSoft Enterprise Learning Management module. Additional information is available on the State of North Dakota's Information Technology Department website at <https://www.nd.gov/itd/standards/employee-security-awareness>.

Section 8. Social Media

Social media is a means of communication using web-based and mobile technologies for the exchange or publication of information. Social media includes but is not limited to social networking sites, blogging, instant messaging, etc. Use of social media for business purposes is at the discretion of the OMB Division Director.

An employee's use of social media must comply with all current OMB policies such as, but not limited to Employer Responsibilities, Confidentiality, Employment Practices, and Use of Electronic Communications Devices.

Section 9. Measuring and Monitoring

- a. Except where precluded by law, the State has the right to monitor the usage of ECDs. Monitoring includes but is 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.

- b. The tools available from the Information Technology Department (by request of an agency) allow for monitoring an individual's Internet usage.
- c. The State reserves the right to block any Internet sites deemed by the State to be unrelated to the State's responsibilities.
- d. The State will disclose records to law enforcement, management, government officials, or third parties through subpoena or other process. Consequently, employees should always ensure that their communications are accurate, appropriate, and lawful.

Section 10. Publishing Cellular Numbers

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

Section 11. Device Usage and Compatibility

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

Section 12. 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.

Section 13. Acknowledgement of ECD Policies (Employee and State-Owned)

An acknowledgement of ECD policies must be completed and signed before a state-owned ECD can be issued or an employee-owned device can be synced or directly attached to the state IT infrastructure.

Section 14. Reimbursement of Employee-Owned Cellular Device Costs

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

ACKNOWLEDGEMENT

I hereby acknowledge receipt of the Office of Management and Budget's Use of Electronic Communication Devices Policy (Chapter 16 HRMS policies). I am aware it is my duty to read and understand the policy. I am also aware that failure to comply with the policy is cause for disciplinary action, up to and including termination.

Employee's Printed Name

Date

Employee's Signature

Submit this acknowledgement to the employee's Division Director at OMB. A copy is to be placed in the employee's personnel file.

CHAPTER 17

TELECOMMUTING

Section 1. Definition

“Telecommuting” is a work arrangement that allows employees to work for all or part of the regular work week at a location other than the customary work site. OMB considers telecommuting to be a viable option for employees in eligible positions who desire workplace flexibility to aid in the recruitment and retention of skilled workers.

Section 2. Determining Feasibility of Telecommuting Arrangement for Positions/Employees

Before advertising a vacant position, the division director shall determine the feasibility of telecommuting based on the following job characteristics:

- a. Results-oriented
- b. Quantifiable, measurable, reasonably tracked
- c. Easily portable
- d. Limited requirement for face-to-face internal/external interaction and communication
- e. Minimal supervision required
- f. Information-based

In addition, the division director or designee shall assess the supervisor and employee suitability for a telecommuting arrangement. HRMS has developed the telecommuting feasibility worksheet to assist managers in assessing the feasibility of a telecommuting arrangement for positions/employees. Refer to page 17-7 of this chapter.

In the event of a pandemic (i.e., widespread outbreak of a communicable disease), OMB will make temporary telecommuting arrangements as it deems necessary under the special circumstances created by the pandemic.

Section 3. Agreement

An OMB division director and employee may enter into an agreement that provides for an employee to telecommute. Arrangements to telecommute must focus first and foremost on the business needs of OMB. Participation in a telecommuting arrangement is discretionary on the part of the division director and voluntary on the part of the employee, unless specifically stated as a condition of employment.

Telecommuting does not change the terms and conditions of employment with OMB. Telecommuting is not an employee right or entitlement.

Before entering into a telecommuting agreement with a current employee, the division director, the employee's supervisor, and the employee shall evaluate the suitability of such an arrangement with regard to the following:

- a. Employee Suitability – the employee and manager will assess the needs and work habits of the employee compared to traits customarily recognized as appropriate for successful telecommuters. Telecommuting is available for regular and temporary full-time and part-time employees who:
 1. Possess a demonstrated skill level in the work to be performed or have been employed by OMB for a period of time to achieve a competency level.
 2. Have demonstrated the ability to work independently and manage their own time and workload
 3. Have exhibited above average performance in accordance with the performance appraisal process.
- b. Job Responsibilities – the employee, employee's supervisor, and division director should discuss the job responsibilities and determine if the job is appropriate for a telecommuting arrangement.
- c. Equipment needs, work space design considerations, and scheduling issues.
- d. Tax and other legal implications for the business use of the employee's home based on IRS and State and local government restrictions; responsibility for fulfilling all obligations in this area rests solely with the employee.

Once the employee, employee's supervisor, and division director agree, the division director shall prepare an agreement, have it reviewed by legal counsel, and obtain signatures of all parties.

Requirements of a Telecommuting Agreement

A telecommuting agreement must address and comply with the following:

- a. Work Schedules - The number of telecommuting days each week, the work schedule the employee will customarily observe, and the manner and frequency of communication must be addressed. Work schedules may parallel those of the customary work site or be structured to meet the needs of the employee and division. The employee must agree to be accessible by phone or e-mail within a reasonable time period during the agreed upon work schedule. Telecommuting employees who are not exempt from the overtime requirements of the Fair Labor Standards Act will be required to record all hours worked in a manner designated by the division director. Hours worked in excess of those specified per day and per week will, in accordance with State and Federal requirements, require the advanced approval of the supervisor or division director. Failure to comply with this requirement may result in an immediate termination of the telecommuting agreement or disciplinary action up to and including termination of employment. Each monthly timesheet must reflect hours worked and/or leave taken as appropriate and in accordance with Fair Labor Standards Act requirements.
- b. Salary - An employee's compensation, benefits, and work status will not be affected by participation in a telecommuting arrangement when the same work would have been performed at the customary work site. If an employee takes a different position to locate in a rural area or is

assigned different work, the classification of the employee's position and the employee's salary may be different from when that employee worked at the customary work site.

- c. Travel - Travel to the customary work site is the responsibility of the employee. Business travel in the course of the workday is reimbursable at travel and per diem rates set forth in OMB fiscal policy. The employee must use a state fleet vehicle if available unless directed otherwise by the division director. An employee with an out-of-state residence will use the North Dakota border when calculating mileage associated with work and identifying a start time for travel. Travel from a personal residence to the North Dakota border is personal time.
- d. Long Distance Phone Calls – Long distance phone calls placed on behalf of the division may be placed through a phone card, access to an “800” toll free line, or reimbursed.
- e. Equipment & Supplies - The division director shall determine, with information supplied by the employee and the supervisor, the appropriate equipment needs for each telecommuting arrangement on a case-by-case basis. Consideration shall be given to the types of office furniture, equipment, supplies, and technical support that the division will provide. Equipment and software must meet organizational standards.

Equipment provided by a division is to be used by the employee for business purposes only. Use by family members or others is prohibited. Equipment supplied by the division will be maintained by the division. The division accepts no responsibility for damages or repairs to employee-owned equipment. The employee must sign an inventory of all state property and agrees to take appropriate action to protect the items from damage or theft. Upon termination of the telecommuting agreement or employment, all division property will be returned to the division, unless other arrangements have been made.

OMB policies relating to computer hardware and software usage applies in the telecommuting arrangement unless otherwise specifically authorized by the division director.

The division should supply materials necessary to complete assigned work at the work site through the employee's visits to the customary work site. Out-of-pocket expenses for supplies normally available through the division should not be reimbursed.

- f. Inclement Weather - If the customary work site is closed due to an emergency or inclement weather, the division director or designated staff person will contact the employee. The employee may continue to work at the telecommute work site. If there is inclement weather or an emergency, such as a power outage, at the work site, the employee shall notify the supervisor or division director as soon as possible.
- g. Workers Compensation - The employee must immediately report any accident or injury to the supervisor or division director.

Workers compensation coverage will be provided for the employee while in the telecommuting arrangement when injuries are sustained in conjunction with the employee's regular work duties. However, the division assumes no liability for injuries occurring to the employee at the work site when the injuries are not sustained in conjunction with the employee's regular duties. The employee is liable for any injuries sustained by visitors to his or her work site.

Trial Period

A telecommuting arrangement/agreement may be entered into for a trial period. If a trial period is agreed upon, evaluation of employee performance during the trial period must include regular interaction by phone and/or e-mail between the employee and the supervisor and weekly face-to-face meetings to discuss work progress and problems. At the conclusion of the trial period, the employee, supervisor, and division director shall complete an evaluation of the arrangement and make recommendations for continuance or modifications. Evaluation of employee performance beyond the trial period will be consistent with that received by employees working at the customary work location in both content and frequency, but will focus on work output and completion of objectives.

Termination of the Telecommuting Arrangement/Agreement

Any telecommuting arrangement may be implemented on a trial basis for a period of time and may be discontinued at any time at the request of either the employee or the division director. A division director may suspend or terminate a telecommuting arrangement/agreement due to operational needs of the division or due to an employee's substandard work performance or work behavior. Management retains the right to refuse or terminate a telecommuting arrangement/agreement at any time followed by written notice to the employee.

Section 4. Division Director Responsibilities Regarding Telecommuting

The division director shall:

- a. Approve or disapprove the employee's participation in a telecommuting arrangement.
- b. Approve or disapprove work site arrangements.
- c. Assess the impact of the telecommuting arrangement on the productivity of the division, the assigned work, and on any other affected employee; ensure that customer service will not be negatively impacted.
- d. Maintain regular contact with the employee or ensure the employee's supervisor maintains regular contact with the employee.
- e. Address work-related issues.
- f. Evaluate and monitor cost/benefit effectiveness of the telecommuting arrangement.
- g. Assess the portability of the employee's workload away from the customary work site.
- h. Develop, amend, and implement performance standards and measurements for work performed; monitor, evaluate, and manage employee's work performance. If the division director is not the employee's supervisor, the division director shall hold the employee's supervisor accountable for this responsibility.
- i. Assure equipment is available for the employee to adequately perform assigned work.

- j. Assure that the Risk Management telecommuting checklist is completed for the proposed work site.

Section 5. Employee Responsibilities Regarding Telecommuting

The employee shall:

- a. Abide by all work-related policies and regulations, work behavior, and expectations as required of any regular employee of the organization.
- b. Maintain proper management, retention, and confidentiality of information and records. Disclose information and records only to those authorized to have knowledge or access to information.
- c. Assure the work site is equipped and maintained in a manner to complete work as assigned.
- d. Observe agreed-upon hours of work in accordance with policy.
- e. Assist in the identification of training needs and participate in and/or provide appropriate training.
- f. Maintain access to appropriate computer equipment.
- g. Maintain safe conditions in the work area and, if working at home, have adequate homeowners, renters, or commercial general liability insurance as required by State Risk Management.
- h. Protect State-owned equipment; use State-owned equipment for official purposes and in accordance with OMB policy.
- i. Be responsible for lost, stolen, or damaged equipment owned by the State.
- j. Spend previously agreed-upon time at the customary work site and attend required meetings.
- k. Provide input during the development and implementation of the telecommuting agreement.

Section 6. Telecommuting as an Accommodation

When requested by an employee, telecommuting 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 division director shall initiate an interactive process with the employee to determine the type of accommodation needed. To determine if any or all of a job can be performed at home, the division director must ensure that essential functions of the position have been identified and consideration given to the feasibility of telecommuting on a full-time, part-time, or intermittent basis. The division director may waive certain telecommuting eligibility requirements, modify the telecommuting policy, or waive or modify other workplace policies to allow an employee with a disability to work from home as a means of reasonable accommodation. The division director will not allow telecommuting as an accommodation if it

prevents the employee from performing the essential functions of the job or causes undue hardship to the agency.

The division director has the right to select the most effective accommodation even if it is not the one preferred by the employee. For additional information, see Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act at <http://www.eeoc.gov/policy/guidance.html> or refer to OMB's reasonable accommodation process outlined in Chapter 3 of this manual.

TELECOMMUTING FEASIBILITY WORKSHEET

PURPOSE:

The purpose of this worksheet is to assist managers in assessing the feasibility of a telecommuting arrangement for positions/employees.

SECTION 1: ELIGIBILITY CRITERIA

Position Data:

Position #: _____ Department: _____

Job Classification: _____ Supervisor's Name & Position: _____

Does position provide direct care to or supervision of clients, patients, students, inmates, etc. on a frequent basis, making telecommuting unworkable?

- Yes
 No

If yes, further analysis is NOT required. Complete Section 5: Recommendation.

SECTION 2: WORK PRODUCT ASSESSMENT

Describe the specific work assignments that are the responsibility of this position.

Duty (PIQ may be used as a basis.)	Work nature (individual v. collaborative)	Requires face-to- face contact with customers	Requires face-to- face contact with co-workers	How will work be measured? (Can tasks be clearly defined?)	Does duty require access to and/or confidentiality of information?	Does this duty lend itself to telecommuting Yes or No?

Required Meetings:

Nature of meeting	Day & Time	Regularly scheduled meetings: what, who, why	Is it practical to hold the meeting via another method?
i.e. staff meeting	Tuesday's at 2:30 pm	Weekly	i.e. phone conference

SECTION 3: MANAGEMENT'S ASSESSMENT OF SUPERVISOR FOR TELECOMMUTING ARRANGEMENT

Supervisory Characteristics	Yes/No	Comments
Possesses strong communication skills?		
Delegates work easily?		
Trusts & empowers employees?		
Sets clear work objectives?		
Exhibits good planning & time management?		
Supports employee growth & development?		
Uses performance standards and measurements?		
Focuses on worker outputs and results (not time spent)?		
Positive attitude toward telecommuting?		

SECTION 4: MANAGEMENT'S ASSESSMENT OF EMPLOYEE FOR TELECOMMUTING ARRANGEMENT

Employee Characteristics	Yes/No	Comments
Self-motivated & self-disciplined?		
Exhibits strong organizational & time management?		
Able to work independently, with minimal supervision, contact with co-workers & feedback?		
Communicates well with supervisor & co-workers?		
Adaptable to changing routines & environments?		
Knows job well & has track record of good performance?		
Positive attitude toward telecommuting?		

Based on responses to the above items, determine if telecommuting for this position is feasible. If so, determine what is a reasonable arrangement for telecommuting:

Length of commitment – temporary or long term?

Number days per week?

Days of week that would be least disruptive to work unit?

Variability of schedule?

SECTION 5: RECOMMENDATION

- Based on the response in Section 1, this position is NOT suitable for telecommuting.
- Based on the analysis above, this position is suitable for telecommuting.
- Based on the analysis above, this position is NOT suitable for telecommuting.

Agency Head Signature

Date

RISK MANAGEMENT TELECOMMUTING CHECKLIST

The workspace selected for a telecommuting work arrangement must comply with the following guidelines to ensure that the space is adequate, safe, and hazard free.

WORKSPACE ENVIRONMENT

- Workspace is away from noise and distractions and devoted to work needs.
- Natural or mechanical ventilation is adequate; temperature control has been adequately selected.
- Area accommodates all equipment and related materials.
- Aisles, doorways, and corners are free from obstructions to permit movement.
- Lighting is adequate to avoid eyestrain caused by glare, reflection, dimness, brightness, etc. Task lights are used for source documents.

WORKSPACE ELECTRICAL AND FIRE SAFETY

- There are enough electrical outlets to support the required equipment and avoid outlet overload. If necessary, consult an electrician to verify outlet electrical circuit capacity.
- Equipment is fitted with grounding adapters, surge protectors, and overload fuses – all Underwriters Laboratory approved.
- Equipment is placed close to electrical cords so there are no tripping hazards. All phone lines, electrical cords, and extension wires are secured underneath desk or along baseboards.
- All electrical equipment is free of recognized hazards that would cause physical harm (e.g. frayed wires, bare conductors, loose wires, flexible wires through walls, exposed wires fixed to the ceiling).
- Sufficient air space should be around electrical components.
- There is a working smoke detector on each floor of the home.
- A home multipurpose fire extinguisher, which you know how to use, is readily available.
- An evacuation plan is in place in the event of a fire.

WORKSPACE EQUIPMENT AND FURNITURE

Desk and Keyboard

- Component desk and keyboard height is ergonomically adjusted to the height of the user so that when the user is seated their elbows form a 90 degree angle.
- Space under desk should be sufficient for lateral movement.
- Desk should be sturdy enough to support the weight of equipment and materials.
- When using the keyboard, user's wrists are straight and wrist pad is used, if needed.

Chair

- Chair is adjustable in height and angle of backrest to provide support to the inward curve of user's back.
- Chair is adjustable to ensure that user's arms are at a 90-degree angle to the keyboard and elbows are at the same height as keyboard.
- Chair is adjustable so knees are at a 90-degree angle and feet are flat on floor or footrest.

Computer Screen

- Distance of viewing screen is 18” to 26” from the eyes.
- Height of viewing screen is adjusted to user’s vision correction. For example, the eye level for users with no vision correction or single vision correction should be approximately one-third of the way down from the top of the viewing screen. For users with bifocals, trifocals, or progressive addition lenses, the top of the viewing screen should be approximately five inches below their line of sight when looking straight ahead.
- There is no glare or reflection on the screen from bright lighting or windows.
- Screen contrast and brightness are adjusted for best reading of images and typed characters on the screen.

INSURANCE

- If the work site is a personal residence, the employee must submit proof of homeowners’, renters’, or commercial general liability coverage to the agency indicating the limits of coverage at the home worksite.

Employee Signature

Date

Person Designated to Complete this Form
(if not employee)

Date

Division Director

Date

TELECOMMUTING AGREEMENT

This Agreement between [employee name] and the [division name] of the Office of Management and Budget is to formalize a process whereby [employee name] will be conducting state business in [specify his/her home or telecommuting office] for a month period. This arrangement will begin on [date] and at any time can be terminated at the will of the employee, [employee name] or the [division name] with written notification.

Both parties to this Agreement voluntarily agree to the following terms and conditions of telecommuting:

- This Agreement is for the period [specify dates or time periods] , which may be extended, and is of mutual benefit to the [division name] , hereinafter referred to as Division, and to [employee name] , hereinafter referred to as Employee.
- *[If the work site is a personal residence and if clients or vendors will be coming to the residence on State business]* Prior to beginning work under this Agreement, the Employee must submit proof of homeowner's, renter's, or commercial general liability coverage to the Division indicating the limits of coverage at the home work site. In addition, the Division will inspect the premises according to Risk Management guidelines.
- The Employee will work away from the customary work site at [specify his/her home or telecommuting office] . The Employee's work schedule will be set and mutually agreed upon between the Employee and the Employee's immediate supervisor on a [specify weekly or other] basis. The employee will complete assigned work as agreed upon. Time and attendance will be recorded according to the Fair Labor Standards Act and in accordance with OMB policy.
- Compensation, benefits, and work status will not change due to this Agreement when the employee is performing the same work as when at the customary work site.
- The Employee will be allowed to use [specified equipment] which will be provided by the Division. Employee agrees to protect any State-owned equipment and to use the equipment only for official purposes and in accordance with Office of Management & Budget policy. Use by family members and others is prohibited. The Division agrees to install, service, and maintain any State-owned equipment issued to the telecommuting employee. Any State-owned equipment will be returned to the Division at termination of the Telecommuting Agreement.
- Employees must obtain supervisory approval before taking leave in accordance with established procedures. The employee agrees to follow established procedures for requesting and obtaining approval of leave.

- The Division will supply materials necessary to complete assigned work at the work site through the Employee's in-office visits. Out-of-pocket expenses for supplies normally available through the Division will not be reimbursed.
- Necessary telephone lines will be provided by the employee. Long distance business calls and internet connection fees will be /specify reimburse, made on credit cards, etc.] .
- All Division data must be handled in a secure and confidential manner.
- The Employee must maintain safe conditions in the work area and practice the same safety habits in the designated work area as the Employee would in the Employee's office on the Division's premises.
- Workers compensation coverage will be provided for the Employee while in the telecommuting arrangement when injuries are sustained in conjunction with the employee's regular work duties. The Division assumes no liability for injuries occurring to the Employee at the work site outside of the agreed-upon work schedule or when injuries sustained are not in conjunction with the performance of the regular work duties.
- The employee will continue to work in pay status while working at a home office. An employee working overtime, ordered and approved in advance, will be compensated in accordance with the Fair Labor Standards Act and Office of Management and Budget policy. The employee agrees that failing to obtain proper approval for overtime work may result in removal from the telecommuting program or other appropriate action.
- The Division will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g. utilities) associated with the use of the employee's residence. The employee does not give up any reimbursement for authorized business for the Division because the employee works from home or another location.
- The Division will not be liable for damages to the employee's property resulting from participation in the telecommuting program. In signing this document, the employee agrees to hold the Division harmless against any and all claims, excluding worker's compensation claims.
- The evaluation of the employee's job performance will be based on established standards. Performance must remain satisfactory for the employee to continue as a telecommuter. Employees will not be allowed to telecommute while on a performance improvement plan.
- The employee will apply safeguards that are approved by the Division to protect records from unauthorized disclosure or damage. All records, papers, and correspondence must be safeguarded for their return to the office.

- The employee agrees to work at the office or telecommuting location and not from another unapproved site. Failure to comply with this provision may result in termination of the agreement and/or other appropriate disciplinary action.

We agree to abide by the terms and conditions of this agreement:

Employee Signature

Date

Supervisor's Signature

Date

Division Director's Signature

Date

CHAPTER 18 INFANTS AT WORK

Section 1. Infant at Work Approval

An employee may submit a request to the division director to care for his or her infant child by birth, adoption, or foster care, under the age of six months, at work during normal work hours. The division director shall consider and approve or deny such request ([SFN 54321, Infant at Work Request](#)).

If the division director approves an employee's request, the employee and other parent of the infant are required to sign a waiver of liability, indemnification, and medical release ([SFN 59429, Infant at Work Waiver of Liability, Indemnification, & Medical Release](#)).

If the infant becomes ill or fussy for a prolonged period of time causing a distraction or preventing the employee or other employees from accomplishing work, the infant must be removed from the workplace. If in the opinion of the employee's supervisor or division director the infant's presence is excessively disruptive in the work environment or negatively affects the productivity of the employee or other employees, the infant at work arrangement will be terminated.

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

Section 2. Employee Responsibilities

The employee must keep the infant in the employee's workspace. For short periods of time, such as restroom breaks, the infant may be in another employee's workspace if the arrangement is mutually agreed upon. The work environment must be safe for the infant at all times.

An employee's child may not accompany an employee traveling in a State vehicle. If the employee's job includes travel, he or she must make alternative childcare arrangements for travel days or must travel in the employee's personal vehicle. Travel must be approved by the division director prior to the travel.

The employee must provide appropriate furniture for the infant's care, i.e. crib, playpen, swing, etc.

The employee must use discretion as to when and where the infant's diapers are changed. 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 office or meeting space.