OMB

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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Authorization for Release of Medical Information for ADA, SFN 59516 ............................................Chapter 3
Interactive Process Questionnaire, SFN 59517 .....................................................................................Chapter 3
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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. (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. (NDAC 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. (NDAC 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.

**Additional Employment**

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

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

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

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

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

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

**Reference: FLSA**

**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**

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

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

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

Gifts: Tokens, meals and refreshments, entertainment, or other benefit of more than a nominal value (i.e., $60).

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

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

An employee may not accept or give anything of value for official position, opinion, or action or nonperformance of a legal duty or for purposes of attempting to influence any other public official or 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 NDCC 16.1-08.1.

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

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

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

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

References: NDAC 4-12-04-04, NDCC 16.1-08.1, 54-44.4

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**


**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 NDCC 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. Employment of Relatives/Nepotism**

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

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

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

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

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

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

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

References: N.D.C.C. §§ 44-04-09 to 44-04-10
CHAPTER 3
EMPLOYMENT PRACTICES

Section 1. Equal Employment Opportunities

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

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

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

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

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

Section 2. Workplace Anti-Harassment

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

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

Harassment becomes unlawful when:
1) Enduring the offensive conduct becomes a condition of continued employment, or
2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
**Sexual harassment:** Unwelcome sexual advances, sexual favor requests, or any other conduct or communication of a sexual nature when:

a. Submission to the conduct is made explicitly or implicitly a term or condition of employment.

b. Submission to or rejection of such conduct is used as the basis for employment decisions.

c. Conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of behaviors, and may involve individuals of the same or different gender. Examples are:

a. Unwanted sexual advances or requests for sexual favors.

b. Sexual jokes and innuendos or verbal abuse of a sexual nature.

b. Leering, massaging, or touching or sexual related comments about another’s body.

c. Displaying inappropriate sexually suggestive or offensive pictures or objects anywhere in the workplace.

If an employee observes or experiences harassing conduct in the workplace, the employee should either directly inform the offender that the conduct is offensive and must stop or notify agency leadership about the occurrence. If an employee does not feel comfortable reporting the situation within the employing agency, he/she should contact HRMS to report the situation.

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

Managers are required to report any harassing conduct they observe, experience, or that is reported to them, to a member of the employing agency’s senior leadership. Agency leadership will work with HR / legal counsel to investigate and resolve all reports of workplace harassment appropriately in a timely, thorough, and discreet manner.

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

References: Title VII of the Civil Rights Act of 1964, ADEA, ADAAA

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

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

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

Undue hardship is an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.
To qualify for protection under the ADA, an individual must:

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

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

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

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

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

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

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

**Section 4. Workplace Violence**

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

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

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

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

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

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

Section 5. Drug and Alcohol Free Workplace

The State of North Dakota, as the employer, desires 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. This policy applies to all employees regardless of status.

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

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

A manager may require 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 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.

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

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

To inform employees about important provisions of this policy, the state has established a drug-free awareness program. The program provides information on the dangers and effects of substance abuse in the workplace, resources available to 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, their Human Resource department or HRMS to receive assistance or referrals to appropriate resources in the community.

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

References: Public Law 100-690

Section 6. Smoking and Tobacco Use

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

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

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

Reference: NDCC 23-12-09

Section 7. 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 way unreasonably 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 8. 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.

**Section 3. Criminal History Record Information**

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

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

The state agency must have a user agreement in place with NDBCI to request any CHRI.
The agency must identify specific positions that will have access to the CHRI. The name of those employees residing in those positions must be reported to NDBCI. If there are any updates to personnel, NDBCI needs to be made aware of those changes. Authorized personnel will be given access to view and handle the records after completing the FBI required training. Employees must sign a Statement of Misuse prior to handling, encountering, or discussing any information presented in the CHRI.

The state agency must provide the individual with two fingerprint cards if applicable: SFN 60688 Criminal History Record Check Request, the state agency authorized to request CHRI must complete the top portion; and Applicant Verification form. The individual will be provided proper instructions on completing the required forms and where to obtain the required fingerprint images. State agencies needing fingerprints completed may send individuals to the ND Highway Patrol Capitol Security location in the State Capitol building (see NDHP website for availability and request forms). In cases where the fingerprints are obtained through the use of live scan and are electronically sent to BCI, no fingerprint cards will be involved in the process.

The individual must provide the fingerprint technician a valid photo identification to verify his/her identity.

The individual must return the completed fingerprint cards which need to be in a sealed envelope if applicable, SFN 60688, and Applicant Verification Form to the authorized personnel. The state agency must maintain proper chain of custody procedures to protect the integrity of the individual’s fingerprints.

When the authorized personnel receive the fingerprint cards they must review to ensure the proper information is completed. If the proper information is not listed, then the authorized personnel must complete that information. The form and fingerprint cards must be placed in a sealed envelope with an authorized personnel’s initials on the flap before they are mailed or sent via inside mail to NDBCI.

NDBCI will return the CHRI information in a sealed envelope marked “confidential”. Only the authorized personnel will open the envelope and the CHRI for the purposes it was intended for.

Upon receipt of the CHRI, authorized personnel will review the information and make a “favorable” or “unfavorable” recommendation based on the state agency’s authority. CHRI cannot be shared with other entities for any purpose, including subsequent hiring determinations.

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

The individual may be asked to provide additional information related to information presented on their CHRI. If an individual believes his/her criminal history record is inaccurate or incomplete, he/she must notify the state agency within five working days of his/her intent to challenge the report.  
• To challenge a North Dakota criminal history record, the individual must contact NDBCI at 701-328-5500.
• To challenge a FBI criminal history record, the individual must contact the FBI at 304-625-5590.

SECONDARY DISSEMINATION: The receiving agency may only give a copy of CHRI to the subject of the record. If a copy is given, then the agency must document that as secondary dissemination. The log should clearly identify the following: date of dissemination, name of subject, subject identification for authentication, the name and identification of the person releasing the character.
information, purpose for which the information is requested. The secondary dissemination logs must be kept for a minimum of three years. The individual has the right to request a copy of his/her CHRI. Only the individual may receive a copy of their CHRI and must pick up the copy at the state agency location.

**PHYSICAL LOCATION:** The results of the records check must be stored to ensure only authorized agency personnel have access. CHRI must be maintained at all times in a secure location (i.e., locked file cabinet or locked room) to prevent access or viewing by unauthorized personnel. Only authorized personnel will have access to the key. The information received from the Federal Bureau Investigation (FBI) and the State of North Dakota must be kept separate (i.e. different file folders).

If CHRI are stored electronically, the agency must comply with technical information security requirements. The requirements for electronic storage and access of CHRI are contained in the FBI CJIS Security policy (available at FBI CJIS Security Policy Resource Center’s website). Electronic security, encryption, and storage protection requirements in the policy apply to agencies converting hardcopy CHRI into electronic format after receipt.

**AUDITS:** NDBCJ will conduct routine audit of the agency’s compliance with state and federal laws every three years. The FBI conducts triennial audits of the state of North Dakota and will visit selected agencies.

**RETENTION:** Each agency should refer to their records retention schedule, but at a minimum, the Information Technology Department Record Management Division has placed Criminal History Record Checks on the General Schedule. Authorized personnel must shred CHRI when the retention period has expired.

**EMPLOYEE RESPONSIBILITIES:** If at any time during employment, an employee is charged with or convicted of a crime he/she must disclose the necessary information to their immediate supervisor or agency human resources. Any employee who is determined to have violated this policy will be subject to disciplinary action up to and including termination of 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 (NDCC 23-12-16, 23-12-17)

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 (NDAC 4-07-07)

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.

**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) 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 Heldheld 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
electronic data, such as requesting segregation, removal, or exchange of computers or
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, to to www.nd.gov/omb 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 week. 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:

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

\[
\text{NOTE: To the above total, add accumulated annual leave at the hourly rate and any sick leave payout.}
\]

c. Part-time status formula:
Hours worked + hours in paid leave status x monthly rate of pay
Payroll hours in month

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

Hours worked + hours in paid leave status x monthly rate of pay
Payroll hours in month

c. Part-time status formula

Hours worked + hours in paid leave status x monthly rate of pay
Payroll hours in month

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:

Monthly rate x number of hours worked
173.33

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:

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

The State of North Dakota, as the employer, provides paid time off or annual leave as a benefit to employees who work in regular positions. Annual leave is earned starting on the first day of employment in a regular, full-time classified position according to the following schedule:

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

Annual leave may not be used before it is earned. Employees who typically work less than full-time will receive a prorated portion of the leave earnings. When calculating the prorated earned annual leave amounts, “work time” includes holidays and paid leave used.

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

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

An employee who is rehired by the state within three years of termination must be credited with their prior service when determining their annual leave earning rate going forward.

When an employee transfers from one state agency to another and there is no break in service, the “sending” agency must pay the employee the value of the earned annual leave hours the “receiving” agency will not accept.

No more than 240 hours of earned and unused annual leave may be carried forward past April 30 of each year. Any hours in excess of 240 hours will be eliminated after April 30. An employee’s supervisor may require an employee to use earned annual leave prior to using earned compensatory time for leave purposes. An employee may not be paid for unused annual leave while the employee remains in the service of the agency except when the employee: takes a long-term leave of absence (six months or more), goes on educational leave, transfers to temporary employment, or if specifically requested by the employing agency and approved by HRMS due to a business-related reason prior to April 30 of each year.

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

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

Reference: NDAC 4-07-12

Sick Leave

The State of North Dakota, as the employer, provides paid sick leave time off as a benefit to employees who work in regular classified positions.

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

Eligible family member: The employee's spouse, parent (natural, adoptive, foster and stepparent), child (natural, adoptive, foster and stepchild), or any other family member who is financially or legally dependent upon the employee or who resides with the employee for the purpose of the employee providing care to the family member.

Serious health condition: A disabling physical or mental illness, injury, impairment, or condition involving inpatient care or outpatient care requiring continuing treatment by a health care provider.
Sick leave is earned beginning on the first day of employment in a regular classified position. Full-time employees in regular positions earn (8) eight hours of sick leave for each month of full-time employment with no maximum accumulation.

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

Temporary employees are not eligible to earn sick leave.

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

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

Grandparents may not take sick leave to care for grandchildren who are ill unless the grandchild is financially or legally dependent on the employee or lives with the employee for the purpose of the employee providing care to the grandchild. Examples of legally or financially dependent would be if the grandparent claims the child on their taxes or has power of attorney over the grandchild.

For all uses of sick leave, the supervisor has the option to request a doctor’s note from the provider.

An employee who leaves employment and who 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 termination, less any amount for which the employee had subsequently been paid.
When an employee transfers from one state agency to another and there is no break in service, the “receiving” agency will accept all accrued sick leave hours. State agencies covered by the North Dakota merit system shall accept all accrued sick leave hours of a county social service employee in a position classified by HRMS.

Employees with ten years of continuous state employment who leave the employment of the state are eligible for payment of ten percent of their unused sick leave balance. An employee may not be paid for unused sick leave while the employee remains in the service of the agency.

References: NDAC 4-07-13, NDCC 54-06-14; 54-52.4-03

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 (NDCC 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** NDCC 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

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


Funeral leave: An approved absence from work with pay for an employee to attend or make arrangements for a funeral as a result of a death in the employee's family.

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

Funeral Leave is prorated for employees working less than 40 hours per week (i.e. an employee normally scheduled to work 20 hours per week would be eligible for 12 working hours of Funeral Leave).

Temporary employees are not eligible for paid funeral leave.

References: NDAC 4-07-14-02, 03, 04

Honor Guard Leave

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

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

Honor guard leave: Approved absence from work with pay for an employee to participate in an honor guard for a funeral service of a veteran.

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

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

Honor guard leave is prorated for employees working less than 40 hours per week (i.e. an employee normally scheduled to work 20 hours per week would be eligible for 12 working hours of honor guard leave.)

Temporary employees are not eligible for paid honor guard leave.

References: NDAC 4-07-14-02, 03, 04
**Holidays (NDCC 1-03)**

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 (NDAC 4-07-16)**

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 (NDAC 4-07-15)**

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 (NDCC 54-06-14.3)**

If an order or proclamation is issued declaring a state of disaster or emergency, or a declaration of at least a level II disaster by the American Red Cross in this or any other state, the division director may grant a leave of absence to any full-time 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 (NDCC 54-06-27)

If an order or proclamation is issued declaring a state of disaster or emergency declaration of at least a level II disaster by the American Red Cross in this or any other state, the division director may grant a leave of absence to any full-time 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 (NDCC 37-01-25)

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 (NDAC 4-07-17)

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 (https://ndpers.nd.gov/active-members/). To enroll in any of the benefits below, employees should go to the Member Self Service portal) 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

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

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 seven thousand dollars ($7,000) per employee. Employees can buy additional insurance coverage for themselves and their dependents through a payroll deduction.

Retirement

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.

Deferred Compensation

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.

FlexComp

An employee may pay for eligible insurance payments, medical expenses, and dependent care expenses with pre-tax dollars through payroll deductions.

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**

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**

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.

**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 | • View your personal information on record at NDPERS  
|                  | • Update your name/marital status  
|                  | • Update your address, telephone numbers and email |

| NDPERS Plans |
|--------------|----------------------------------|-----------------|----------------------------------|
|              | • 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 | • Provides a direct link to Retirement Plan member account balance details |

| Benefits Estimates | • Request an official retirement benefit estimate from NDPERS  
|                   | • Calculate a benefit estimate on-line  
|                   | • View benefit estimate you performed |

| Service Credit Purchase | • 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** *(NDCC 44-08-04)*

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.

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

ELIGIBILITY

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

PROGRAM DETAILS

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

a. The birth or care of the employee’s child within the first 12 months after the birth.

b. The placement or care of a newly adopted or foster child within the first 12 months after placement.

c. Care for the employee’s spouse, son, daughter, or parent, 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. Employees who provide day-to-day care or financial support to a child can be considered “in loco parentis” even if they have no biological or legal relationship with
a child and be entitled to 12 weeks of FMLA leave. The employing agency may require the employee provide reasonable documentation or a statement of family relationship.

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. Examples would include an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the job or prevents the qualified family member from participating in school or other daily activities.

e. A qualifying event arising from an employee’s spouse, child, or parent that is a covered military member on active duty or has been notified of impending call or order to active duty in the armed forces. Examples would include short-notice deployment, military events and related activities, counseling, post-deployment activities, and additional activities that may arise out of active duty or call to active duty status.

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

An employee and spouse who work for the same employer are entitled to a combined total of 12 weeks of FMLA leave if taken for the birth, adoption or foster care of a healthy child, or to care for the employee’s parent with a serious health condition. An employee and spouse who work for the same employer are each entitled to 12 weeks of FMLA leave if the child with a serious health condition was born or placed for adoption or foster care. The employee and spouse may be limited to a combined total of 26 weeks of FMLA leave when care for a covered service-member with a serious injury or illness is taken in addition to FMLA leave for birth of the 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.

When medically necessary, employees may take FMLA leave intermittently or on a reduced work schedule for their own serious health condition, the serious health condition of a family member, or to care for a covered service-member with a serious injury or illness.

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

While on FMLA leave, the employing agency will continue to pay employer paid benefit premiums for the employee.
REQUIRED DOCUMENTATION

An employee requesting FMLA leave must complete the required paperwork, obtain medical certification, and submit the completed documents to the employing agency as soon as the need for FMLA leave is known. Forms should be obtained from the employing agency’s HR. Failure to provide the requested information or medical certification with the leave request may result in denial of the leave until it is provided.

If an employee wishes to return to work prior to the expiration of a FMLA leave of absence, written notification must be given to the employing agency prior to the employee’s planned return. An employee may also be required to submit to additional examinations by a health care provider selected and paid for by the employing agency. Any recertification requested by the employing agency shall be at the employee’s expense. The employing agency 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, or

c. The employing agency receives information that casts doubt upon the continuing validity of the certification.

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

RETURN TO WORK

Upon return from FMLA leave, an employee who is not designated as a “key employee” will be restored to his or her original position or an equivalent position with equivalent pay, benefits, and any other employment rights that existed at commencement of the leave or that may have accrued during the FMLA leave period. An employee designated as a “key employee” may not be provided restoration rights upon return from FMLA leave. Whether a position is an “equivalent position” is the decision of the employing agency. Individuals designated as “key 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 takes leave for their own serious health condition may be required to provide a fitness for duty certification signed by the health care provider prior to his/her return to work. 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.

An employee who fails to return at the end of the FMLA leave will be considered to have voluntarily resigned unless additional leave as a reasonable accommodation under the Americans with Disabilities Act is necessary. If an employee fails to return from an FMLA leave, the employing agency may recoup the cost of employer paid benefit plan premiums for any period of the FMLA leave which was taken as unpaid leave, unless the reason the 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 caring for a newborn with a serious health condition, the spouse is transferred to a location more than 75 miles from the employee’s worksite, etc.

If the employing agency enacts a reduction-in-force during the employee’s absence and the employee would have lost his/her position, the employee retains any rights under the employing agency’s Reduction in Force policy but may not be eligible for reinstatement under FMLA.

PAID LEAVE USE AND HOLIDAY CONSIDERATIONS

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

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

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

References: 29 CFR §825  
NDCC 54-52.4-03  
NDAC 4-07-13-07

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 (NDCC 54-06-24)

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.
NDCC 54-06-24

Section 2. Service Award Program (NDAC 4-07-18)

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** (NDAC 4-07-18)

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.

NDCC 4-07-36
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. Driving While Conducting State Business**

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

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

Reference: [NDCC 24-02-03.3](#)
**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 completed electronically at [www.workforcesafety.com](http://www.workforcesafety.com). 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. Modified Duty/Return-to-Work

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

The State may, at its sole discretion, provide modified job assignments to injured workers on a temporary basis. Modified assignments under this policy are specially created temporary job assignments and are not vacant or regular positions within the State’s workforce. The availability of such modified assignments depends on the employee’s work restrictions and the business needs of the State.

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

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

Modified assignments are not available to employees on an ongoing basis under any circumstances.
The existence of this modified duty policy does not in any way guarantee that modified duty will be available at any given time, or for any particular employee who requests it.

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

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

References: Americans with Disabilities Act of 1990 (ADA) and ADA Amendments Act of 2008

**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 EVALUATION

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

The performance evaluation process is an ongoing discussion between an employee and the direct supervisor to establish a clear understanding regarding:

1. The essential job functions of the position;
2. How the employee’s job contributes to the objectives of the division/agency/state;
3. How the employee and supervisor will work together to sustain, improve, or build on existing employee performance;
4. How job performance will be measured;
5. Identification and removal of barriers; and
6. Identification of development plan to learn and grow.

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

Annual Timeline

**July – September:** Priorities are set within the agency. Job descriptions are reviewed to ensure the information is current. Employees complete their key goals, outcomes, and development planned for the next 12 months. The supervisor and employee review the information together.

**October – March:** Supervisor meets with the employee to discuss career aspirations, associated development plan, as well as a check-in on performance. This discussion should be documented as part of the performance appraisal.

**April – June:** Supervisor schedules a discussion with employee concerning accomplishments, outcomes, and development achieved throughout the past year. Employee completes the self-evaluation, and the supervisor completes their portion of the form. Annual performance evaluations completed serve as basis for salary administration. Agencies will establish internal deadlines for completion in accordance with the annual statutory requirement but no later than June 30.

An employee receiving an overall needs improvement rating must be placed on a performance improvement plan.

A probationary status employee will receive a performance evaluation at the end of the probationary period. If the employee is not meeting performance standards, their probationary period may be
extended for up to six months or they may be terminated from employment. A probationary employee must be advised by the supervisor of an extension of probation, in writing, prior to the completion of the six month period. Lack of notice within fifteen working days of completion of the probationary period means that the employee has successfully completed the probationary period and is moved to regular status.

If an employee’s supervisor changes during the evaluation cycle, both supervisors share responsibility for the yearly evaluation. It is the responsibility of the new supervisor to assure the performance evaluation is completed within the required timeline, and it is the responsibility of the former supervisor to provide feedback for the appropriate portion of the evaluation.

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

Reference NDAC 4-07-10
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.

REF: NDAC 4-07-20.1, 4-07-19
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


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) (NDAC 4-07-11, 4-02-20.1)

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.
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 OMB issued ECDs for assessing external email.

e. Must not use ECDs for the purposes of probing or hacking.

f. Must not use ECDs for any illegal activity, gambling, trading in illegal substances, etc.

g. Must not use ECDs to knowingly download, copy, distribute, store, or use pirated software or data;

h. 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.

i. Must not create or distribute a virus or intentionally cause damage to any ECDs or bypass any State virus detection system in place.

j. Must protect the ECD from theft, damage, abuse or unauthorized use.

k. Must immediately report suspicious activity or unauthorized access of an ECD.

l. Must report a lost or stolen ECD immediately.

m. Must conform to State procurement policies when making business related purchases using an ECD.
Section 5. Email Use

Communication via email is approved by OMB but caution should be exercised in its use. This guidance applies to all ECDs:

- Email messages and attachments are not encrypted by default and are therefore vulnerable to interception by persons with malicious intent.
- Email messages and attachments sent to destinations in the ‘nd.gov’ domain are not encrypted.
- All email messages including personal email messages are the property of OMB and may be examined if deemed necessary by OMB.
- Email users will not permit unauthorized individuals to access their State of North Dakota email account.
- Email users should exercise caution when receiving unsolicited email messages or attachments:
  - Unsolicited messages may be spam or junk mail but could be part of a phishing attack.
  - Clicking a link or opening an attachment may initiate the download of malicious software.
- OMB does not permit accessing external email on OMB issued ECDs.
- Access to many external email sites has been blocked to prevent checking personal email.
- Contacts made through email should not be trusted with OMB information unless due diligence has first been performed.
- The State of North Dakota’s email system does provide some protection against spam and phishing emails.
  - All inbound/outbound messages are scanned for common malware and spam filters are in place:
    - Suspicious spam emails are dropped.
    - Emails identified with malicious attachments are dropped.
    - Specific file type attachments are automatically removed from messages before the message is forwarded to the recipient.
  - If you are expecting an email message that may have been removed or an attachment that may have been removed, contact OMB IT.

We don’t restrict use of personal devices using the STAGEnet Guest wireless network. We don’t restrict staff from forwarding items from personal email to work email.

Section 6. 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 7. Safety Requirements When Using ECDs**

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

**Section 8. 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.

**Section 9. 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 10. 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 11. Publishing Cellular Numbers

Fiscal and Administrative Policy 514 addresses publishing of cellular numbers.

Section 12. Device Usage and Compatibility

Fiscal and Administrative Policy 514 addresses device usage and compatibility.

Section 13. 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 14. 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 15. 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**

<table>
<thead>
<tr>
<th>Position Data:</th>
<th></th>
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<tbody>
<tr>
<td>Position #: __________________</td>
<td>Department: __________________</td>
</tr>
<tr>
<td>Job Classification: __________</td>
<td>Supervisor’s Name &amp; Position: ________________</td>
</tr>
</tbody>
</table>

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.

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

<table>
<thead>
<tr>
<th>Nature of meeting</th>
<th>Day &amp; Time</th>
<th>Regularly scheduled meetings: what, who, why</th>
<th>Is it practical to hold the meeting via another method?</th>
</tr>
</thead>
<tbody>
<tr>
<td>i.e. staff meeting</td>
<td>Tuesday’s at 2:30 pm</td>
<td>Weekly</td>
<td>i.e. phone conference</td>
</tr>
</tbody>
</table>

### SECTION 3: MANAGEMENT’S ASSESSMENT OF SUPERVISOR FOR TELECOMMUTING ARRANGEMENT

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

### SECTION 4: MANAGEMENT’S ASSESSMENT OF EMPLOYEE FOR TELECOMMUTING ARRANGEMENT

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