



OMB AGENCY ESSENTIALS

OCTOBER 15, 2020

Lisa Kudelka, Chief People Officer

Jeff Larshus, Director of State Financial Services

Tag Anderson, Risk Management Director

NORTH
Dakota
Be Legendary.™

Management
and Budget

AGENDA

Lisa Kudelka, Chief People Officer

Topics: State jobs classification change and Fair Labor Standards Act.

Jeff Larshus, Fiscal Management Director

Topics: 75% budget allotment rule, Federal and Special Funding authority adjustments and Accounting reports that are available on the Transparency website, Cognos reports.

Tag Anderson, Risk Management Director

Topic: Risk management basics for managers.

STATE JOBS CLASSIFICATION SYSTEM

Lisa Kudelka, Chief People Officer



JOB EVALUATION – COMMON PRINCIPLES

- Method of determining relative “value” of jobs within an organization
- Factors usually considered, in some form:
 - Skill (Know-how)
 - Effort (Problem Solving)
 - Responsibility (Accountability)
 - Working conditions (Additional Compensable Elements)
 - Market comparisons

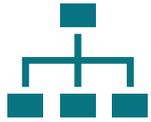
JOB EVALUATION – COMMON PRINCIPLES

- Individual qualifications and performance are separate considerations, but process generally assumes competent performance
- Goals of the process:
 - Consistency
 - Objectivity
 - Equity
 - Ability to attract and retain talent in a competitive market

- A classification is defined by the following attributes:
 - Classification title (and code)
 - Classification description
 - Brief statement of nature, level and scope of work
 - List of typical duties performed
 - Knowledge, skills and abilities required
 - Minimum qualifications
 - Grade level

CLASSIFICATION

CLASSIFICATION



A classification generally includes multiple jobs or positions



As we use the term, a job description (formerly JDQ or PIQ) details the specific attributes of a position



Specific positions are assigned to classifications based on a verified job description and related contextual information that provide a basis for comparisons to both classification definitions and to other comparable positions.

Position purpose

Major responsibilities

Authority

Knowledge and skills required

Organizational structure

Typical and most complex problems



Working conditions



STATE OF NORTH DAKOTA PROCESS SUMMARY

- Agency/employee submits completed Classification Request, Job Description, and current organization chart
- HRMS reviews and determines classification
- If there is concurrence, the process is complete
- Request may be reviewed by Job Evaluation Committee if reconsideration of an HRMS decision is requested or if a new classification is deemed necessary
- Final appeals, if necessary, reviewed by State Personnel Board

A scenic landscape featuring a calm river or lake. The water reflects the surrounding green and yellow foliage. On the left bank, there is a small wooden dock with a white railing. The background shows a dense forest of trees with some autumn-colored leaves. The sky is a clear, light blue.

FAIR LABOR STANDARDS ACT WAGE AND HOUR RULES

Lisa Kudelka, Chief People Officer



INTRODUCTION

- The Fair Labor Standards Act (FLSA) was passed in 1938. Sets standards for child labor, minimum wage and overtime pay.
- With the passage of the Equal Pay Act in 1963 as part of the FLSA, the act also prohibits gender-based wage discrimination.

WHAT IS FLSA?

- FLSA is the federal law that sets for standards for child labor, minimum wage, overtime pay and equal pay for men and women performing the same jobs.
- The child labor and minimum wage and overtime provisions of the FLSA were passed in 1938. Adopted as a means of economic recovery from the Great Depression. Laws sought to ensure a maximum number of jobs that paid a minimum livable wage.

WHAT IS FLSA (CONT.)?

- By requiring overtime, FLSA created a monetary penalty for employers that did not spread their existing work among a greater number of employees.
- By setting standards for child/minors to work, it ensured that when young people work, the work is safe and does not jeopardize their well-being or educational opportunities.

PENALTIES FOR VIOLATIONS

- Employees ordinarily bear the burden of proof under the FLSA, but the employer may be obligated to give employees access to work records so that they can attempt to prove claims.
- If the employer has not adequately maintained records, the court may accept the employee's claim and give the employer the burden of disproving allegations.
- Employers automatically bear the burden of any exemption under the act.

DEFINITIONS OF EXEMPT & NONEXEMPT EMPLOYEES

Exempt employees

Employees who meet one of the FLSA exemption tests and are not entitled to overtime.

Nonexempt employees

Employees don't meet any of the FLSA exemption tests and are covered by wage and hour laws regarding minimum wage, overtime pay, and hours worked.

EXEMPTIONS

- Department of Labor assumes all jobs are nonexempt
- Exemptions are generally narrowly defined
- Employers need to determine and be able to prove exemptions to DOL



EXEMPT EMPLOYEES

- Paid on a salary basis
- Receive a minimum salary of \$455/week
- Pass primary duties test
- Exempt employees are not subject to:
 - Minimum wage
 - Overtime
 - Timekeeping

CATEGORIES OF EXEMPTIONS FROM FLSA MINIMUM WAGE AND OVERTIME PAY REQUIREMENTS

- Executive
- Administrative
- Professional
- Computer-related
- Highly compensated

EXECUTIVE EXEMPTION

Primary duty is managing the enterprise or a recognized department or subdivision of enterprise.

Customarily and regularly directs two or more full time employees.

Authority to hire or fire or make recommendations that carry weight on significant employment decisions.

ADMINISTRATIVE EXEMPTION

Primarily performs office or non-manual work directly related to the management or general business operations of the employer.

Exercises discretion and independent judgment with respect to matters of significance.



ADMINISTRATIVE EXEMPTION

- DISCRETION AND INDEPENDENT JUDGEMENT
- Evaluating, acting and making a decision
- Authority to commit the agency in matters that have significant financial impact
- Authority to deviate from procedures without prior approval
- Independent choice free from immediate supervision

PROFESSIONAL EXEMPTION

Primarily performs work that requires advanced knowledge and that is primarily intellectual in character and includes the exercise of discretion and independent judgment.

Must have advanced knowledge in a field of science or learning.

Must have acquired the advanced knowledge in a prolonged course of specialized intellectual instruction (academic degree).



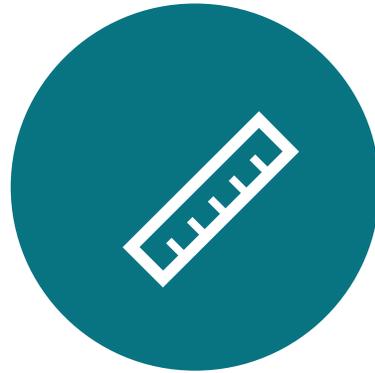
PROFESSIONAL EXEMPTION

- Performance of work requiring advanced knowledge
 - Intellectual in character
 - Requires consistent exercise of discretion and judgment
 - Analyze, interpret, or make deductions from varying facts and circumstances

PROFESSIONAL EXAMPLES



Registered
Nurse



Engineer



Accountant

PROFESSIONAL (LEARNED AND CREATIVE) EXEMPTION

- Creative professional:
 - Must be paid at least the established minimum salary
 - Primarily performs work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual or physical work
- Included writing and graphic arts

COMPUTER EMPLOYEES

Must be paid at least the established minimum salary or at least \$27.63 per hour. (Does not have to be paid on a salary basis. If paid hourly, must be paid at least straight time for all hours worked, even hours over 40 in a workweek.)

Primary duty must consist of one of the following:

- Application of system analysis techniques including consulting with users to determine hardware, software, or system functional specifications
- Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs
- Design, documentation, testing, creation or modification of computer programs related to machine operating systems
- A combination of these duties that requires the same level of skills.

COMPUTER EMPLOYEE EXEMPTION EXAMPLES



Developer



Network
Analyst



Software
Engineer



COMPUTER EMPLOYEES

- Does not include:
 - Employees who repair hardware and peripherals
 - Employees who install software, troubleshoot problems or train others to use computers
 - Employees who use computers to do their work

COVERED EMPLOYEES

- Exempt Employees are exempt from:
 - Overtime pay requirements
 - Timekeeping requirements
 - Minimum wage requirements
- Exempt employees get paid to get the job done

COVERED EMPLOYEES

- Nonexempt Employees are:
 - Subject to all requirements of the law
 - Must be paid at least minimum wage - \$7.25
 - Must be paid overtime for hours worked over 40 hours worked in a work week
- Nonexempt employees get paid for the time they work



COMPENSABLE TIME

- When the employee is required or permitted to work
- Employee cannot waive the right to receive overtime or work “off the clock”

REQUIRED RECORDS

- Records for nonexempt employees:
 - Weekly time reports
 - Hours worked each day
 - Comp time earned, used and paid out

COMMON RECORDKEEPING PROBLEMS

- LACK of any time records
- Records don't reflect actual time worked
- Not reviewed by supervisor
- Multiple employees on one timesheet
- Multiple weeks on one-time sheet
- Inaccurate comp time records



BASICS OF OVERTIME

- Workweek
 - Seven consecutive 24-hour period (must be defined)
 - Each workweek stands alone
 - Work schedule may be adjusted within the workweek to minimize or eliminate overtime liability

BASICS OF OVERTIME

- Overtime
 - Any time worked over 40 hours in a workweek
 - Paid in cash or compensatory time

COMPENSATORY TIME OFF

- Overtime paid in the form of time off
 - 1.5 hours of paid time off for every hour worked over 40
 - FLSA limits accrual to 240 hours (160 hours x 1.5)
 - Accrued time does not expire
 - Paid at the current hourly rate when used
 - Must be paid at termination
 - Only allowed in the public sector

QUICK QUIZ:
TRUE OR FALSE?

Employers are required to provide a lunch break to employees?

Employers are required to provide two breaks per day?

Employees can volunteer to work?

NORTH DAKOTA LABOR REQUIREMENTS

- Majority of the requirements are the same as the Federal DOL requirements.
- A minimum 30-minute meal period must be provided in shifts exceeding five hours when there are two or more employees on duty.
- Employees may waive their right to meal period upon agreement with employer.
- Unpaid if completely relieved of duties.

75% ALLOTMENT RULE

Jeff Larshus, Fiscal Management Director



- Agencies can only spend 75% of their Salary and Operating line items during the first 18 months of the biennium
- December 2020 will be the 18th month, which will include the December paid January payroll
- Emergency Commission can grant a waiver

APPROPRIATION
75% ALLOTMENTS

NDCC 54-27-11

APPROPRIATION 75% ALLOTMENTS

- Agencies that reached the 75% limit will be reported at the next Budget Section Meeting
- Expenditures that are over the 75% will be charged to the January 2021 accounting period
- The OMB query NDS_Allotment_75 will provide salary and operating balances

NDCC 54-27-11

FEDERAL & SPECIAL FUND AUTHORITY ADJUSTMENTS

Jeff Larshus, Fiscal Management Director



FEDERAL AND SPECIAL FUND AUTHORITY ADJUSTMENTS

- Legislature appropriates this as other income in the appropriation bill
- Agencies give OMB the Federal and Special fund authority amounts
- Agencies can change the authority between the Federal and Special funding sources during the biennium without going to the Emergency Commission

FEDERAL AND SPECIAL FUND AUTHORITY ADJUSTMENTS

- To make a change, send a letter to Melanni Hoff at OMB mjhoff@nd.gov requesting a change between the two funding sources
- All other requests for appropriations adjustments must go to the Emergency Commission and Budget Section



TRANSPARENCY PORTAL/MONTHLY COGNOS REPORTS

Jeff Larshus, Fiscal Management Director



TRANSPARENCY PORTAL/MONTHLY COGNOS REPORTS

The transparency portal provides a variety of Cognos reports that are updated monthly. State higher education and government agency information is available for the past five biennia.

Home > Public > Transparency

Transparency

Welcome to the State of North Dakota's Transparency Portal
North Dakota believes transparency leads to more effective and accountable government, and a more informed and engaged community.

Finance

Financial data including how the state generates and spends revenue.

 CHECKBOOK	 EMPLOYEE COMPENSATION	 DAILY CASH BALANCE
 STATE REVENUES	 FUNDS	 STATE APPROPRIATIONS
 MONTHLY REPORT	 COVID-19/CARES ACT	

▾ Finance

Financial data including how the state generates and spends revenue.



CHECKBOOK



EMPLOYEE
COMPENSATION



DAILY CASH
BALANCE



STATE REVENUES



FUNDS



STATE
APPROPRIATIONS



MONTHLY REPORT



COVID-19/CARES
ACT

- Checkbook: filter by agency or university, expense code, fund and vendor name.
- Employee Compensation: provides salary and benefit information for state agencies and universities.
- Daily Cash Balance: depicts General Fund cash balance and Special Funds used by all state agencies and universities. Federal Funds are summarized into one amount and are updated daily.

▾ Finance

Financial data including how the state generates and spends revenue.



CHECKBOOK



EMPLOYEE
COMPENSATION



DAILY CASH
BALANCE



STATE REVENUES



FUNDS



STATE
APPROPRIATIONS



MONTHLY REPORT



COVID-19/CARES
ACT

- State Revenues: types of state revenue collected; filter by state agency or university.
- Funds: view a statewide trial balance for the General Fund, each Special Fund, and total of all Federal Funds. These three trial balance reports are only state agencies funds, even though the dashboard includes state agencies and Higher Ed funds.

▾ Finance

Financial data including how the state generates and spends revenue.



CHECKBOOK



EMPLOYEE
COMPENSATION



DAILY CASH
BALANCE



STATE REVENUES



FUNDS



STATE
APPROPRIATIONS



MONTHLY REPORT



COVID-19/CARES
ACT

- State Appropriations: four reports available:
 - Appropriation status by agency, statewide appropriation totals, detailed revenue and expenditure accounts by agency, and statewide detail account.
- Monthly Report Dashboard: provides agency appropriation status and organizational status at the department level, or in total.
- COVID-19/Cares Act: provides overview of all federal funds that are assigned the COVID-19 program code, CARES Act special appropriation line code, and all federal funds that have CARES funding in the title.

MONTHLY PEOPLESOFT REPORTS

Jeff Larshus, Fiscal Management Director



- Monthly reports that can be emailed to agencies on the 15th of each month.
- Can customize reports or queries.
- Contact Toby Mertz at OMB, tmertz@nd.gov, for assistance.

MONTHLY PEOPLESOFT REPORTS

INTRODUCTION TO RISK MANAGEMENT

Tag Anderson, Risk Management Director

INTRODUCTION TO RISK MANAGEMENT

- Established Following Loss of Sovereign Immunity
- Enactment of NDCC Chapter 32-12.2
 - Division of the Office of Management and Budget.
 - Risk Management Fund.
 - Process for submitting claims.
 - Limitations on State liability.
 - State employee defense and indemnity.
 - Statewide risk management coordination.

INTRODUCTION TO RISK MANAGEMENT

- Risk Management Fund – self-retention fund
 - *NOT INSURANCE*
- Responds to third-party liability that would require multiple lines of coverage if secured through private insurance (e.g. Professional E&O, D&O, Auto, etc.)
- RM Fund is not “insurance” and does not operate like traditional private insurance products (e.g. no permissive driver coverage like under personal auto policies; cannot add non-state entity as additional insured).
- All State Entities must participate and have no authority to purchase liability insurance without OMB approval.



INTRODUCTION TO RISK MANAGEMENT

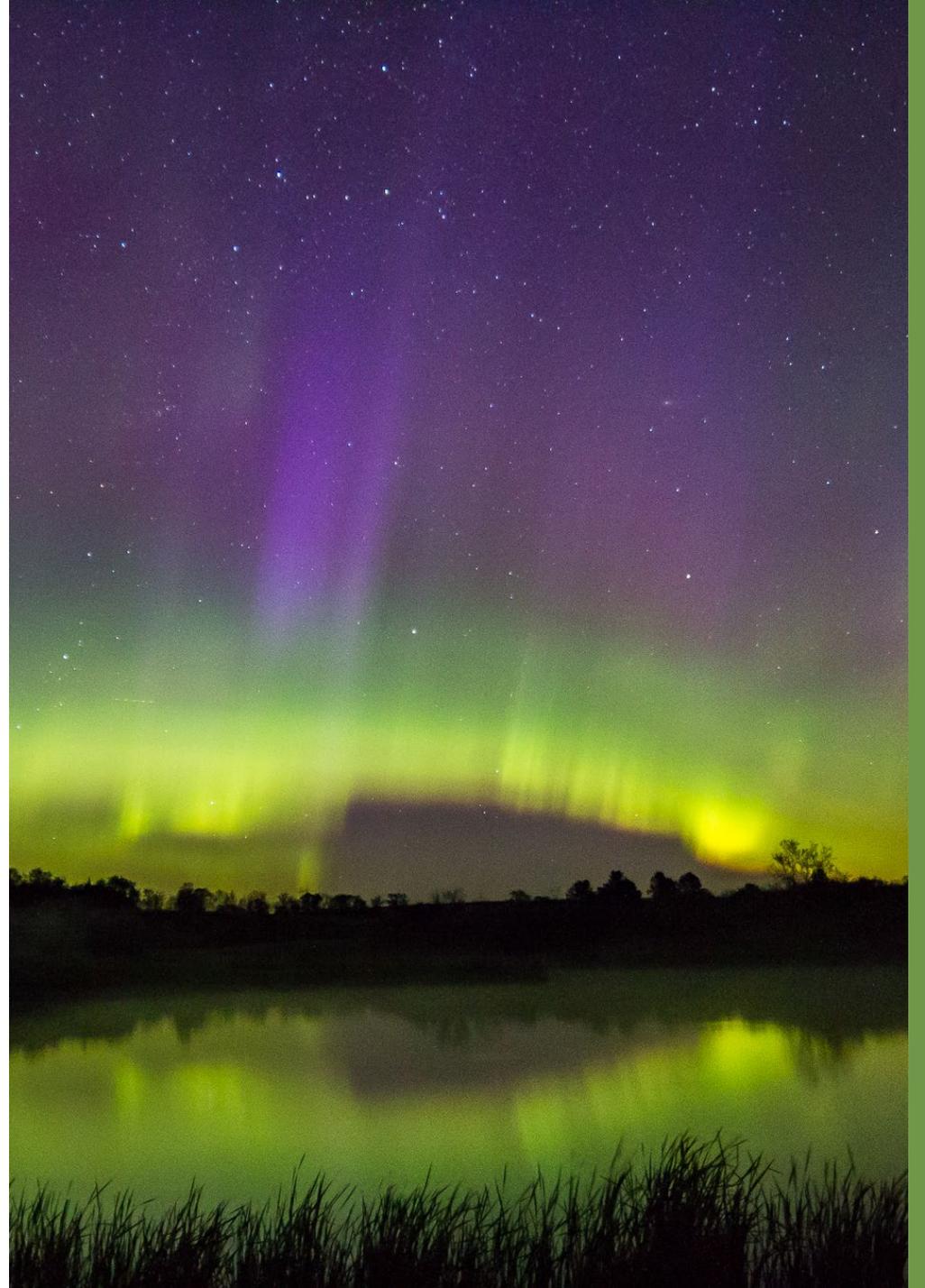
- Coverage is Defined by Statute
- Monetary claims.
 - Suits seeking purely equitable are not covered – attorneys fees agency responsibility.
- Claims sounding in tort.
 - Breach of contract claims are agency responsibility.
 - Regulatory proceedings not covered.

INTRODUCTION TO RISK MANAGEMENT

- State employee defense and indemnity.
- Claims arising from the negligent or wrongful actions of a state employee occurring within the scope of employment must be brought against the State and not the employee.
- Employee must provide prompt written notice (10 days) of suit to Agency and Attorney General, request a defense and fully cooperate in the defense of the action.
- Attorney General makes scope of employment determination. (Duties or tasks “lawfully assigned.”)

INTRODUCTION TO RISK MANAGEMENT

- Property insurance
 - Fire and Tornado administered by NDIRF.
- All Risk Inland Marine Policy
 - Coordinated by Risk management but responsibility rests with agency to contact and schedule.
- Foreign Travel



INTRODUCTION TO RISK MANAGEMENT

- Excess Liability Insurance Program
 - Excess Insurance policy purchased by RM.
 - Addresses extraterritorial exposures and claims where statutory caps do not apply or have been invalidated.
 - Up to \$10 million in coverage with various limitations/exclusions.

INTRODUCTION TO RISK MANAGEMENT

- Coverage for Data Breach - Cyber Liability
- Coverage is automatic for all State entities except BND.
- Premium costs are included as part Risk Management Contributions.
- Prompt notification of a data breach to Risk Management critical.
- Confidential information or personal information as outlined in NDCC Chap. 51-30.

INTRODUCTION TO RISK MANAGEMENT

- Rental Vehicles
- State Cooperative Contract
 - Required for all State entities
 - Includes liability and damage waiver protection
- Risk Management and State Fiscal Policy 518 requires use of cooperative contract and purchase of liability and damage waiver protection if not available.
- www.nd.gov/omb/agency/risk-management-services/vehicle-liability



INTRODUCTION TO RISK MANAGEMENT

WORKERS COMPENSATION PROGRAM

- 2001 Legislature established single State account with WSI to be administered by the Risk Management Division of OMB.
- All State entities must participate unless exempted by the Director of OMB.
- Authorized/directed the RM Division to enter into large deductible agreements with WSI.

INTRODUCTION TO RISK MANAGEMENT WORKERS COMPENSATION PROGRAM

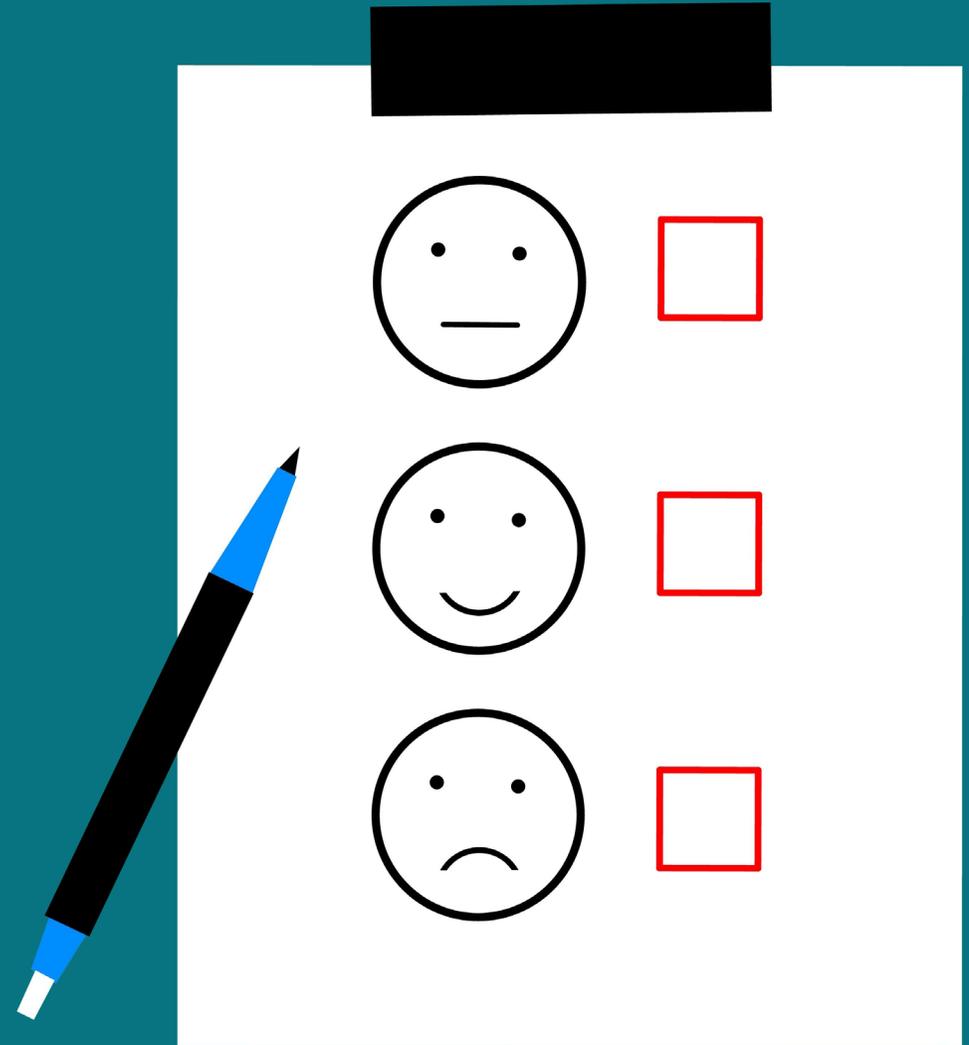
- Every individual that performs services for another for remuneration of any kind is presumed to be an employee requiring workers compensation coverage.
- Use of Personal Service Contracts
 - Contract language does NOT control employee versus independent contractor status
- Contractors and required coverage – optional voluntary coverage.
- Unpaid volunteer coverage.

RISK MANAGEMENT RESOURCES

- Risk Management Manual
 - www.nd.gov/omb/agency/risk-management-services
- Guidelines Managing Contractual Risk
 - www.nd.gov/omb/agency/risk-management-services/contractual-risk
- Attorney General's Contract Drafting Manual
 - www.nd.gov/omb/agency/risk-management-services/contractual-risk

CHECK THE MEETING CHAT FOR A SURVEY LINK

- Please take a quick survey - we want to know your thoughts on OMB Agency Essentials



QUESTIONS

