

**ND DEPARTMENT OF TRANSPORTATION
POLICY NUMBER: 20.1**

COMPLAINTS/GRIEVANCES – FILING PROCEDURES

DIVISION	Human Resources	ORIGINAL DATE	02-01-1980
		REVISED/REVIEWED DATE	12-13-2016

SCOPE: This policy applies to all employees regardless of status and may apply to applicants for employment.

POLICY

It is the policy of the Department to provide a means to have complaints/grievances heard and resolved at the level of supervision most directly associated with the complaint/grievance.

These internal grievance and appeal procedures serve as a supplement to the Administrative Rules in North Dakota Administrative Code chapters 4-07-20, 4-07-20.1 and 4-07-20.2 and provide a complete process for all matters either appealable or not appealable to Human Resource Management Services (HRMS).

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

Employee Responsibilities:

The Department’s internal grievance procedure applies to all Department employees. Employees are responsible for complying with the procedures in this chapter and all additional procedures required by North Dakota Administrative Code for filing a complaint/grievance.

Prior to implementing the formal grievance or complaint procedure, an employee may first consult with the Human Resources Division (HRD), the Civil Rights Division (CRD), or an Affirmative Action representative (AAR).

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

Employer Responsibilities:

Supervisors and managers must make a good faith effort to resolve an employee complaint/grievance at their level. They must attempt to provide a fair and reasonable resolution to employee complaints/grievances 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 or district engineer. Retaliation against an employee for filing a complaint/grievance is prohibited.

Mediation:

Mediation may be used to resolve disputes. 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 Department's grievance procedure must be activated. The mediator shall determine the date of conclusion of the mediation process and notify the parties.

Time Limits:

The steps comprising the internal complaint/grievance process contain time limitations. An employee should be allowed a reasonable amount of time to process a complaint/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 on approval of the Department's Director. Requests for extensions must be received by the Department's Director prior to the established deadline.

COMPLAINT/GRIEVANCE PROCEDURE FOR EMPLOYER ACTIONS INVOLVING FORCED RELOCATION, DISMISSAL, DEMOTION OR SUSPENSION WITHOUT PAY:

Eligible Employees:

Employees are encouraged to first discuss a grievance or complaint with their supervisor. If the supervisor is unable to assist the employee, the employee may file a formal internal grievance or complaint.

- 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 this pre-action process, the employee may grieve the decision through the internal grievance process as outlined in this section. Failure on the part of the employee to grieve shall be construed as acceptance of the decision and may affect an employee's ability to appeal to an entity outside the Department.
- b) Probationary and non-classified employees may not appeal forced relocation, dismissal, demotion or suspension without pay from employment except pursuant to a claim of discrimination or reprisal.

There are three steps to the complaint/grievance process involving employer actions. Complaints/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 within the time prescribed shall be construed to be acceptance of the determination at that point, and the same complaint/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/grievance, using a Complaint/Grievance of Employer Actions form (SFN 9963). The written complaint/grievance must be filed with the Department Director 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 Department Director will acknowledge receipt of the complaint/grievance within five working days of receipt. The Department Director may request copies of all material upon which the decision was based including any written information provided by the employee prior to the decision. The Department Director, upon review of the information, may assign a team 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/grievance. The Department Director will notify the employee within five working days of the receipt of the complaint/grievance that an investigation will be conducted. The Department Director 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 Department Director will review the written material and determine whether there was merit to the grievance. The Department Director will issue a written response to the employee within 15 working days of North Dakota Department of Transportation's (NDDOT) receipt of the written supporting information. The written decision of the Department Director ends the NDDOT internal complaint/grievance procedure.

Step Three:

The employee, if dissatisfied with the response or action taken by the Department Director, may appeal to HRMS and have his or her appeal heard by the Office of Administrative Hearings (OAH). The appeal must be filed with the Director of HRMS 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. 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 or the date of actual delivery. NDDOT 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 Department Director. OAH will consider the appeal in accordance with North Dakota Administrative Code § 4-07-20.1-08.

COMPLAINT/GRIEVANCE PROCEDURE FOR NON-EMPLOYER ACTIONS

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

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

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 a Complaint/Grievance of Non-Employer Actions form (SFN 60738), with the immediate supervisor within ten working days of the incident or grievable action, or within ten working days after informal discussion with the immediate supervisor has failed to resolve the grievance. If the complaint is with the immediate supervisor, the process advances to the next highest supervisory level.

The supervisor, upon receipt of a written complaint/grievance, shall inform the division director or district engineer and must respond to the complaint/grievance in writing within ten working days of receipt of the written complaint/grievance 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 ten working day response period, may continue the formal grievance process by filing the grievance form with the division director or district engineer within ten working days from receipt of the immediate supervisor's response. The division director or district engineer must receive the continued grievance within ten working days from the date of notice of the immediate supervisor's response. The division director or district engineer, 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 district engineer, may continue the formal grievance process by filing the grievance form with the Department Director within ten working days from receipt of the division director's or district engineer's response. The Department Director shall notify the employee's division director or district engineer of receipt of the complaint/grievance, properly review the issue, and give a final written response to the employee within 20 working days of receipt of the complaint from the employee. The final written decision of the Department Director is final and ends the complaint/grievance process.

APPEALS OF REDUCTION IN FORCE:

A regular employee may appeal to HRMS a reduction-in-force only on the basis that the Department did not utilize a uniform comparative analysis as required by North Dakota Administrative 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 North Dakota Century Code § 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 North Dakota Administrative 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 North Dakota Century Code § 14-02.4-01. The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with the Department.

DISCRIMINATION GRIEVANCE PROCEDURE FOR APPLICANTS:

The Department has established a grievance procedure for applicants for positions in the Department 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 North Dakota Administrative Code Chapter 4-07-20.2.

Procedure for Non-Employee Applicants

An applicant with an alleged discrimination complaint may file a grievance with the Department Director. 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 from the

Department Director 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 Department Director ends the Department's administrative complaint process.

Grievances from applicants for non-classified jobs are not appealable beyond the Department Director. If an applicant for a classified job is dissatisfied with the decision of the Department Director, the applicant may file an appeal with the Director of HRMS under the provisions of North Dakota Administrative Code Chapter 4-07-20.2.

Procedure for Employees Who Are Applicants

For employees who are applicants, the complaint must be filed with the Department Director. 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 Department Director will be provided to the applicant within 15 working days following completion of the investigation report.

If an applicant for a classified job is dissatisfied with the decision of the Department Director, the applicant may file an appeal with the Director of HRMS under the provisions of North Dakota Administrative Code, Chapter 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 notice.

APPEALS OF REPRISAL:

The Department has established a grievance procedure for applicants for positions in the Department and probationary and regular employees who believe they have been subject to reprisal. Reprisal is an unfavorable employment-related action taken against an applicant or employee by the 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. These procedures are a supplement to the rules in North Dakota Administrative Code Chapter 4-07-20.2.

Procedure for Non-Employee Applicants

An applicant for a classified position who alleges reprisal may file a grievance with the Department Director. The grievance must be in writing and filed within fifteen working days of the alleged reprisal action. An investigation may be conducted as determined by the Department Director. A response of the Department Director will be provided to the grievant within 15 working days following completion of the investigation report.

If the applicant for a classified position is dissatisfied with the decision of the Department Director, the applicant may file an appeal with the Director of HRMS under the provisions of North Dakota Administrative Code Chapter 4-07-20.2.

Grievances from applicants for non-classified jobs are not appealable beyond the Department Director.

Procedure for Employees

A regular or probationary employee, or a current employee applying for a classified position, who alleges reprisal may file a grievance with the Department Director. The grievance must be in writing and filed within fifteen working days of the alleged reprisal action. An investigation may be conducted as determined by the Department Director. A response of the Department Director will be provided to the grievant within 15 working days following completion of the investigation report.

If the grievant is dissatisfied with the decision of the Department Director, the applicant may file an appeal with the Director of HRMS under the provisions of North Dakota Administrative Code Chapter 4-07-20.2.

Grievances from regular or probationary employees for non-classified jobs are not appealable beyond the Department Director.

ADDITIONAL COMPLAINT PROCESS:

For a Department action of discrimination in employment, retaliation, or reprisal, regular, probationary, and temporary employees, as well as applicants, may also choose to file a complaint with the North Dakota Department of Labor or U.S. Department of Transportation.

North Dakota Department of Labor - Complaint Process:

The Department encourages all employees and applicants to follow its grievance and complaint process. However, an employee or applicant may choose to file or appeal the Department Director's decision regarding complaints of discrimination, retaliation, or reprisal to the North Dakota Department of Labor.

The U. S. Equal Employment Opportunity Commission (EEOC) has designated the Department of Labor as the agency to handle charges of employment discrimination, retaliation, or reprisal filed with the EEOC that are within the state's jurisdiction. The employee or applicant must file or appeal the complaint to the Department of Labor within the appropriate time frame identified by law.

Depending on the type of complaint, the time frame can vary from 300 days to one year. Employees or applicants may contact the Department of Labor for more information on the types of complaints or appeals that can be filed with their agency. The address is:

North Dakota Department of Labor and Human Rights
Sixth Floor
600 East Boulevard Avenue
Bismarck, ND 58505-0120
Phone: (701) 328-2660
TTY: (800) 366-6888

U. S. Department of Transportation - Complaint Process

Complaints of discrimination, retaliation, or reprisal may be filed directly with, or appealed to, the Secretary of the U.S. Department of Transportation. The complaint or appeal must be filed, in writing, no later than 180 days after the date of the alleged discrimination, retaliation, or reprisal, unless the time for filing is extended by the Secretary. The complaint or appeal may be filed before, during, or after the complaint is filed with the Department. The address is:

Secretary
U. S. Department of Transportation
Room 4132
400 Seventh Street, Southwest
Washington, D. C. 20590

DEFINITIONS:

1. "***Alternative Dispute Resolution***" 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. North Dakota Administrative Code Chapter 4-07-21.
2. "***Appeal***" means the review of a departmental decision by an entity outside the agency such as Human Resources Management Services (HRMS), Federal Highway Administration, or the Department of Labor.
3. "***Appointing Authority***" means the Department Director or designee(s) having power to make appointments to positions within the NDDOT.
4. "***Cause***" means conduct or factors related to a probationary or 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.
5. "***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."

6. **"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.
7. **"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.
8. **"Department Director"** means the director of the North Dakota Department of Transportation.
9. **"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, 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.
10. **"Dismissal"** means an involuntary termination of employment.
11. **"District Engineer"** means the director of a specifically identified district within the NDDOT.
12. **"Division Director"** means the director of a specifically identified division within the NDDOT.
13. **"Employer action"** is defined as an action involving demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment.
14. **"Forced relocation"** means the involuntary transfer or reassignment of a regular employee from one work location in the state to another work location in the state that requires the employee to move to a different place of residence. Telecommuting and other alternative work location agreements are not considered forced relocations.
15. **"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."
16. **"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.
17. **"Non-Employer Action"** means an unsatisfactory work related action, conduct, or circumstance that an employee may be subjected for which an internal resolution is sought.

Non-employer actions do not include actions taken by the employer involving demotion, dismissal, suspensions, forced-relocation, reduction-in-force, reprisal, or discrimination in employment.

18. ***"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.

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

20. ***"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. The term "reprisal" may be used interchangeably with the term "retaliation".

21. ***"Suspension without pay"*** means a forced unpaid leave of absence.

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

Authority:
NDAC 4-07-20

<p>DISCLAIMER: North Dakota Department of Transportation (NDDOT) Personnel Policies are not intended as a contract of employment and do not constitute one. NDDOT may change, delete, suspend, or discontinue any policy or benefit described herein at any time with or without prior notice.</p>
