

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

EMPLOYEE GRIEVANCE AND COMPLAINT POLICY

DIVISION	Human Resources	ORIGINAL DATE	02-01-1980
		REVISED/REVIEWED DATE	05-01-2011

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

POLICY

The Department provides a method for all employees and applicants for employment to resolve certain employer actions. This procedure is an orderly process for employees and applicants to file grievances or complaints and be provided a response in a timely manner.

Retaliation against an employee or applicant for employment for filing a grievance or complaint is prohibited. Employees and applicants may present a grievance or complaint without fear of future discrimination, retaliation, or reprisal.

An employee may be allowed a reasonable amount of time to process a grievance or complaint without loss of pay during regular working hours.

Grievance Process:

Regular employees may file a grievance in response to a Department action of demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, discrimination in employment, retaliation, or reprisal.

Probationary and temporary employees, as well as applicants for employment, may file a grievance for allegations of discrimination in employment because of race, color, religion, sex, age, national origin, physical or mental disability or handicap, genetics, political opinion or affiliation, status with regard to marriage or public assistance, or participation in lawful activity off the Department's premises during non-working hours which is not in direct conflict with the essential business-related interests of the Department, or allegations of retaliation or reprisal.

Informal Assistance for Employees

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).

Process to File a Grievance or Complaint

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.

The employee or applicant **must** complete and submit a Grievance or Complaint Form (SFN 9963) to the Department Director within 15 working days from the date of notice of the action. The “**date of notice**” is the date the notice was mailed, transmitted by electronic means, or absent proof of the date of mailing or delivery of electronic means, the date of actual delivery. The Department will prepare a certificate of service or provide reliable means to show proof of the date of mailing, transmittal by electronic means, or hand delivery.

“**Working days**” means Monday through Friday exclusive of holidays.

The completed Grievance or Complaint form should state the exact nature of the grievance or complaint, the issues involved, and the solution requested.

Failure to begin the grievance or complaint procedure within time limitations may cause the employee to lose the right to appeal to Human Resource Management Services (HRMS).

The Department Director, or designee, may, for good cause, waive the time limitations for filing a grievance or complaint. “**Good cause**” means those circumstances that reasonably, and without any fault on the part of the employee or applicant, prevented the filing of a grievance or complaint in a timely fashion. However, in no event may a grievance or complaint be deemed timely after 60 days have elapsed from the date of the employer action.

An employee may submit a written request to the Department Director to extend the deadline to attempt to resolve the matter informally within the work group. If an employee does not request an extension of the deadline and submits a grievance or complaint after the deadline, the Department Director may still accept the grievance or complaint for review if the informal discussion process with the employee's supervisor(s) can be verified.

Department Response to a Grievance or Complaint

The Department Director determines whether a grievance or complaint will be formally investigated. The Department Director or designee will attempt to make a final written decision regarding the grievance or complaint within 20 working days from the date the form is received. The Department Director will notify the employee in writing if the decision is to be delayed.

If the Department misses an established deadline in the grievance or complaint procedure and the employee or applicant has not been notified in writing of the delay, the grievance or complaint may be advanced to the next step.

The Department Director will respond to the issues raised in the grievance or complaint.

Appeal Process:

Filing an Appeal with HRMS

An employee or applicant who is not satisfied with the internal grievance or complaint decision **may file an appeal with HRMS** in the following situations:

Regular employees may file an appeal with HRMS in response to a Department action of **demotion, dismissal, suspension without pay, forced relocation, discrimination in employment, retaliation, or reprisal.**

Probationary and temporary employees and applicants may file an appeal with HRMS in response to a Department action of allegations of discrimination in employment because of race, color, religion, sex, age, national origin, physical or mental disability or handicap, genetics, political opinion or affiliation, status with regard to marriage or public assistance, or participation in lawful activity off the Department's premises during non-working hours which is not in direct conflict with the essential business-related interests of the Department, or allegations of retaliation or reprisal.

The Grievance and Complaint Form (SFN 9963) **and** the HRMS Appeal Form (SFN 3096) **must** be submitted to HRMS **within 15 working days** from the date the Department Director's decision was received. The address is:

Director
Human Resource Management Services
14th Floor
600 East Boulevard Avenue
Bismarck, ND 58505-0120
Phone: (701) 328-3290
TTY: (800) 366 6888

HRMS will refer the appeal to the Office of Administrative Hearings to determine if the appeal is timely and is an issue for which HRMS has jurisdiction. An Administrative Law Judge will either schedule a hearing or dismiss the appeal.

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 Labor Department or U.S. Department of Transportation.

North Dakota Labor Department - 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 Labor Department. The U. S. Equal Employment Opportunity Commission (EEOC) has designated the Labor Department 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 Labor Department **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 Labor

Department for more information on the types of complaints or appeals that can be filed with their agency. The address is:

North Dakota Labor Department
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, 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

Authority:
NDAC 4-07-20

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