

## **CHAPTER 52-02 JOB SERVICE NORTH DAKOTA**

### **52-02-01. Job service North Dakota created.**

There is hereby created job service North Dakota which is charged with administering the provisions of the North Dakota unemployment compensation law and the provisions of the North Dakota state employment service, as set forth in chapter 52-08, which must be administered by a full-time salaried executive director, who is subject to the supervision and direction of the governor. The governor is authorized to appoint, fix the compensation of, and prescribe the duties of the executive director, provided that the appointment must be made on a nonpartisan, merit basis. The duties and responsibilities of the executive director extend to and include the power of full administration of the provisions of the North Dakota unemployment compensation law, and the provisions of chapter 52-08 relating to the North Dakota state employment service, including job insurance programs, and the establishment and maintenance of free public employment offices. The executive director may also establish separate divisions and make separate appointments as the executive director deems advisable for efficient administration of the duties and responsibilities imposed hereunder. Any separate appointments must be on a nonpartisan, merit basis.

### **52-02-02. Powers, duties, organization, and methods of procedure of bureau - Seal.**

The bureau may adopt, amend, or rescind such rules and regulations, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable in the administration of the North Dakota unemployment compensation law. Such rules and regulations are effective upon publication in the manner, not inconsistent with the provisions of the North Dakota unemployment compensation law, which the bureau shall prescribe. The bureau shall determine its own organization and methods of procedure in accordance with the provisions of the North Dakota unemployment compensation law and shall have an official seal which shall be noticed judicially.

#### **52-02-02.1. Adult education and training - Grants to students.**

Repealed by S.L. 2009, ch. 441, § 1.

### **52-02-03. Biennial report - Recommendations by bureau.**

The bureau shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. Whenever the bureau believes that a change in contribution or benefit rates shall become necessary to protect the solvency of the fund, it shall inform the governor and the legislative assembly promptly and make recommendations with respect thereto.

### **52-02-04. General and special rules and regulations of the bureau - When effective.**

General and special rules may be adopted, amended, or rescinded by the bureau only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules become effective ten days after notification or mailing to the last-known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the bureau and become effective in the manner and at the time prescribed by the bureau.

### **52-02-05. Text of chapter and other rules and regulations to be published by bureau for distribution.**

Repealed by S.L. 2005, ch. 453, § 1.

### **52-02-06. Merit system and personnel.**

1. In accordance with chapter 54-44.3 and rules adopted thereunder and on the basis of the authority granted under section 52-02-02, the bureau shall select and prescribe the

duties and powers of officers, employees, and other persons as may be necessary in the performance of its duties under the chapter; provided, that in cooperation with North Dakota human resource management services the bureau shall take such action as may be necessary to meet the personnel standards adopted by the secretary of labor pursuant to the Social Security Act [42 U.S.C. 301 et seq.] and the Wagner-Peyser Act [48 Stat. 113; 29 U.S.C. 49-49k], both as amended.

2. Notwithstanding any provision of law to the contrary, the bureau shall have authority to dismiss without notice any person employed in the administration of the North Dakota unemployment compensation law upon receipt of notice of a determination by the United States civil service commission that that person has violated the provisions of the Act of the Congress of the United States entitled "An Act to prevent pernicious political activities", as amended [18 U.S.C. 61(a)] and that the violation warrants the removal of that person from employment.

**52-02-07. State unemployment insurance advisory council - Composition - Duties - Compensation.**

1. The governor shall appoint an unemployment insurance advisory council consisting of eight members:
  - a. Five members must represent employers, two of whom must represent employers employing fewer than twenty-five employees, one of whom must represent employers employing twenty-five or more employees, one of whom must represent an employer from the positive employer rate groups, and one of whom must represent an employer from the negative employer rate groups. Each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
  - b. Two members must represent employees, one of whom must represent organized labor and one of whom does not hold a managerial position in employment.
  - c. One at-large member who must be a resident of the state.
2. Of the members first appointed, the term of office of three members is three years, the term of office of three members is two years, and the term of office of two members is one year. Thereafter, the term of office of each member is three years. The governor shall fill any vacancy on the council by appointing a member to complete the unexpired term.
3. The council shall select a chairman annually from its members.
4. The unemployment insurance advisory council shall advise job service North Dakota regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program, and on any related issue or concern brought to the council's attention by the executive director or the executive director's designee. The council shall meet at least once each calendar year and may meet at the call of the chairman or at the call of the executive director.
5. The members of the unemployment insurance advisory council must be reimbursed for any necessary expenses and are entitled to receive compensation in the sum of one hundred dollars per day spent in attendance at meetings.

**52-02-08. Bureau and advisory councils to take steps to stabilize employment.**

The bureau, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take appropriate steps to:

1. Reduce and prevent unemployment.
2. Encourage and assist in the adoption of practical methods of career and technical education training, retraining, and career development counseling.
3. Investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment.
4. Promote the reemployment of unemployed workers throughout the state in every other way that may be feasible.

5. Carry on and publish the results of investigations and research studies.

**52-02-09. Job service administration fund.**

The job service administration fund consists of all money received from the United States, or any agency thereof, and all money received from any other source for administrative and program purposes except for the funds created by sections 52-03-01, 52-04-22, and 52-09-05. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota. All money deposited or paid into this fund must be continuously available to the bureau for expenditure in accordance with the provisions of this law and may not lapse at any time or be transferred to any other fund. The fund must consist of any money appropriated by this state in accordance with section 52-02-11; all money received from any other source for the administration of the North Dakota unemployment compensation law; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or any insurance policy or from other sources for losses sustained by the job service administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of this law. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to subsection 4 of section 52-03-07 must remain a part of the unemployment compensation fund and must be used only in accordance with the conditions specified in section 52-03-07.

**52-02-10. Expenditure of moneys in fund.**

All moneys in the job service administration fund received from the United States or any agency thereof for the administration of the North Dakota unemployment compensation law, or which may be appropriated by the state for any of the purposes described in the North Dakota unemployment compensation law, must be expended solely for the purposes and in the amounts found necessary by the social security board of the United States or any other agency of the United States succeeding thereto, for the proper and efficient administration of the North Dakota unemployment compensation law.

**52-02-11. Reimbursement of funds.**

The state of North Dakota recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and be applied to the replacement of, any moneys received after July 1, 1941, from the social security board under title III of the Social Security Act [42 U.S.C. 501 et seq.], any unencumbered balances relating to the administration of the North Dakota unemployment compensation law in the job service administration fund as of that date, any moneys thereafter granted to the state pursuant to the provisions of the Wagner-Peyser Act [48 Stat. 113; 29 U.S.C. 49-49k], and any moneys made available by the state or its political subdivisions and matched by such moneys granted to the state pursuant to the provisions of the Wagner-Peyser Act, which the social security board finds have been lost or have been expended because of any action or contingency for purposes other than or in amounts in excess of those found necessary for the proper administration of the North Dakota unemployment compensation law by the social security board. Such moneys must be replaced promptly by moneys appropriated for such purpose from the general funds of this state to the job service administration fund for expenditure as provided in section 52-02-09. The amount of money required for such replacement must be reported promptly by the bureau to the governor and the governor shall report the same to the legislative assembly. This section may not be construed to relieve the state of North Dakota of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act [42 U.S.C. 501 et seq.].

**52-02-12. Attorney to represent bureau in actions under the North Dakota unemployment compensation law.**

In any civil action to enforce the provisions of the North Dakota unemployment compensation law, the bureau and the state may be represented by any qualified attorney who is employed by the bureau and is designated by the attorney general.

**52-02-13. Cooperation with social security board and other federal agencies - Reports.**

In the administration of the North Dakota unemployment compensation law, the bureau shall cooperate to the fullest extent consistent with the provisions of the North Dakota unemployment compensation law, with the social security board, created by the Social Security Act, approved August 14, 1935, [49 Stat. 620; 42 U.S.C. 301 et seq.] as amended. The bureau shall make such reports in such form and containing such information as the social security board may require and shall comply with such provisions as the social security board from time to time may find necessary to assure the correctness and verification of such reports. The bureau shall comply with regulations prescribed by the social security board governing the expenditures of such sums as may be allotted and paid to this state under title III of the Social Security Act [42 U.S.C. 501 et seq.] for the purpose of assisting in the administration of the North Dakota unemployment compensation law.

**52-02-14. Manner of cooperation between state and other states and federal government.**

The administration of the North Dakota unemployment compensation law and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services and making available facilities and information. The bureau may make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided in the North Dakota unemployment compensation law with respect to the administration of the North Dakota unemployment compensation law as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and in a like manner, may accept and utilize information, services, and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law.

**52-02-15. Reciprocal arrangements with other states and federal government.**

The bureau shall enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government or both, by which:

1. Services performed by an individual for a single employing unit, which services customarily are performed in more than one state, must be deemed to be services performed entirely within any one of the states:
  - a. In which any part of such individual's services is performed;
  - b. In which such individual has such individual's residence; or
  - c. In which the employing unit maintains a place of business if there is in effect as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit, are deemed to be entirely within such state;
2. Potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the bureau finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;
3. Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal

government, must be deemed to be wages for insured work for the purpose of determining the individual's rights to benefits under the North Dakota unemployment compensation law, and wages for insured work, on the basis of which an individual may become entitled to benefits under the North Dakota unemployment compensation law, must be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable. No such arrangement may be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under the North Dakota unemployment compensation law upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the bureau finds will be fair and reasonable as to all affected interests; and

4. Contributions due under the North Dakota unemployment compensation law with respect to wages for insured work, for the purposes of sections 52-04-11 through 52-04-14, must be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement may be entered into unless it contains provisions for such reimbursements to the fund of such contributions and the actual earnings thereon as the bureau finds will be fair and reasonable as to all affected interests.

**52-02-16. Title to real property acquired with federal funds.**

The state of North Dakota may receive and accept title by general warranty deed to real property which may be acquired under standard legal practices, or combinations thereof, for acquisition of real estate in accordance with the needs and requirements of the particular transaction by documents executed or to be executed by the bureau, provided the property must be acquired without appropriation by the state of North Dakota and the cost thereof must be defrayed by federal funds made available for the administration of said bureau. Sufficiency of title to any property acquired hereunder must be approved by the attorney general prior to execution of documents for acquisition of such property. Property acquired under authority hereof must be for the use and benefit of the bureau to carry out and perform the duties, powers, and authority vested therein, and to administer and participate in federal programs delegated thereto by federal authority. Upon completion of negotiations for acquisition said property may be held and occupied by the bureau at no cost other than maintenance.

**52-02-17. Trust fund balance - Report to legislative council.**

The bureau shall report to the legislative council before March first of each year the actual trust fund balance and the targeted modified average high-cost multiplier, as of December thirty-first of the previous year. In addition, the report must include a projected trust fund balance for the next three years.

**52-02-18. Independent performance audit.**

The state auditor, upon request of the legislative audit and fiscal review committee, shall cause a performance audit of job service North Dakota to be conducted within twelve months after receipt of the request. The state auditor may appoint an independent audit firm, with extensive expertise in job service practices and standards, to complete a performance audit or the state auditor may conduct the performance audit. If the state auditor completes the audit, the state auditor may contract with a consulting firm to aid in the state audit or to complete the audit and shall charge job service North Dakota for the audit, including the services of the consulting firm. The executive director of job service North Dakota and the auditor shall present the audit report and any action taken as a result of the audit to the legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative assembly following the audit.