Supervisor's Handbook Section: Personnel

NORTH DAKOTA YOUTH EMPLOYMENT LAWS AND REGULATIONS
Every employee must receive at least $4.75 per hour for all hours worked, including preparation time, closing time, and any required meetings or training. The minimum wage rate will be $5.15 per hour effective September 1, 1997.

A person must be at least 14 years of age to be employed in North Dakota unless that person is an independent business person, or works for their parents, grandparents, legal guardian, or on a farm or in domestic service. Domestic service includes services of a household nature performed by an employee in or about the private home of the employer. It is suggested to secure verification of age.

Anyone 14 or 15 working in North Dakota must have an "Employment and Age" certificate to be employed. A minor's parents are responsible for obtaining this certificate and properly completing it. The "Employment and Age" certificate may be obtained at various locations. Contact the Department of Labor for more information. (It is not required for volunteers.)

Employers must pay regularly, weekly, every other week, or monthly. At that time, the employee must also be given a statement listing any deductions - like taxes - taken from their checks, along with the rate of pay and hours worked.

An employee must be given at least a 30-minute break if such is desired, in each shift exceeding five hours when there are two or more employees on duty.

Everyone has the right to a safe workplace. Youths 14 and 15 years old may not do anything dangerous or work in any hazardous occupations. Contact the Department of Labor for more information.

Youths 14 and 15 years old may not work before 7 a.m. or after 7 p.m. They may work no more than 18 hours during school weeks, and no more than 3 hours on school days. A school week is considered to be any week Monday through Sunday in which a youth is required to be in attendance, for any period of time, four or more days.

The number of hours a youth may work varies in the summer. From June 1st to Labor Day, 14 and 15 year old youths may work 40 hours a week, and 8 hours a day. They may also work until 9 p.m. during these summer hours, but they still may not work until 7 a.m.

Maximum hours per day: 3 per school day; 8 per non-school day.
Maximum hours per week: 18 per school week; 40 per non-school week.
Hours of the day: May only work between 7 a.m. to 7 p.m. (9 p.m. June 1 through Labor Day).
Baby-sitting: Baby-sitting under twenty hours per week is not considered employment and can be done by youths of any age. If more than twenty hours per week, it is considered employment and the employee must be at least 14 (unless it is done for the youth's parents, guardian, or grandparent).
Lawn Mowing: Youths of any age may operate lawnmowers in domestic service.

No minor 14 or 15 years of age may be employed or permitted to work in:
* Any employment involving the use of any power-driven machinery; but this prohibition does not apply to the use of (a) office machines, such as adding machines or typewriters; (b) tagging, pricing, or similar machines used in retail stores; (c) domestic-type machines used in food service operations, such as toasters, coffee grinders, milkshake blenders; (d) machines used in service stations such as those in connection with care cleaning,

washing, or polishing, or in the dispensing of gasoline or oil; provided, however, that no work involves the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with removable retaining ring; or (e) lawnmowers.

* Construction work other than cleaning, errand running, moving, stacking, loading, or unloading materials by hand.
* Lumbering or logging operations.
*Sawmills or planning mills.
*The manufacture, disposition, or use of explosives.
*The operation of any steam boiler, steam machinery, or other steam generating apparatus.
*The operation or assisting in the operation of laundry machinery.
* Preparing any composition in which dangerous or poisonous acids are used.
*The manufacture of paints, colors, or white lead.
*Operating or assisting in the operation of passenger or freight elevators.
* Any mine or quarry.
* The manufacture of goods for immoral purposes.
* Any other employment not herein specifically enumerated that may be considered dangerous to life or limb or in which health may be injured or morals depraved.
* Occupations which involve working on an elevated surface, with or without use of safety equipment, including ladders and scaffolds in which the work is performed higher than six feet from the ground surface.
*Security positions of any such occupation that require the use of a firearm or other weapon.
* Door-to door sales of any kind.
* Occupations involving the loading, handling, mixing, applying, or working around or near any fertilizers, herbicides, fungicides, pesticides, insecticides, or any other chemicals, toxins or heavy metals.
* Occupations in or in connection with medical or other dangerous wastes.
* Occupations, which involve the handling or storage of blood, blood products, body fluids, and body tissues.
* Cooking, baking, grilling, or frying.

All other laws under North Dakota Century Code Chapter 34 and Administrative Code Title 46 also apply to the employment of youths. Employers should still check Federal Child Labor Laws when hiring youths.

For more information, or if you have any questions, phone (**701) 328-2660** or **1-800-582-8032** or write to:
North Dakota Department of Labor, State Capitol, 600 E Boulevard - 6th Floor, Bismarck, North Dakota 58505

MINIMUM WAGE AND HOUR LAWS

In 1985, the US Supreme Court Ruled that all public employees **must** conform to the provisions of the Fair Labor Standards Act. Accordingly, all state and local government employees (this includes employees of soil conservation districts) are subject to the minimum wage and overtime requirements of the Fair Labor Standards Act, unless exempted under some specific provision of the Act. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a work week. Employees paid on an hourly basis must keep time cards that are signed by their supervisor.

There is also a requirement under law providing for equal pay for equal work. It is, therefore, up to each soil conservation district board to use its own judgment in determining wages for its employees. All district employees **must** be covered by Workers Compensation.

If you have any questions regarding the minimum wage and overtime requirements of the Fair Labor Standards Act, you may call a US Department of Labor compliance officer at one of the following locations for assistance:
Bismarck, ND: (701) 250-4320, Fargo, ND: (701) 239-5229.

Compensatory Time Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime

compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only - (A) pursuant to - (i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or (ii) the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provisions of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) if compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the
employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than - (A) the average regular rate received by such employee during the last 3 years of the employee's employment, or (B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency - (A) who has accrued compensatory time off authorized to be provided under paragraph (1), and (B) who has requested the use of such compensatory time, shall be permitted by the employee's employer 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 public agency.

(6) For purposes of this subsection - (A) the term "overtime compensation" means the compensation required by subsection (a), and (B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

INFORMATIONAL POSTERS REQUIRED FOR EMPLOYERS IN NORTH DAKOTA --
Click here http://www.nd.gov/labor/publications/posters.html

UNEMPLOYMENT COMPENSATION

The Unemployment Compensation Laws were amended during the 1977 Legislative Assembly and as of January 1, 1978, require all governmental units in North Dakota to insure their workers. This includes soil conservation districts.

If you have any questions regarding Unemployment Compensation requirements for soil conservation districts, you may call Job Service North Dakota, Tax Section, at this toll free number for assistance:
1-**800-472-2952**

Unemployment Compensation Benefit Financing Options for Governmental and 501C3 Tax Exempt Employers

Option 1 — Contributing Method - The employer makes quarterly contributions to the unemployment compensation trust fund, the amount of which is determined by the employer's assigned tax rate and taxable employee wages. Initially, the employer is assigned a tax rate of 2.8 percent. After four years, the employer is assigned an experienced-based rate which is determined by the excess of taxes paid over benefits charged in relation to the employer's average annual taxable payroll. Rates are determined each October 1 for the following calendar year.

Under this option, benefits are not charged to an employer's account for rate computation purposes if the employee left employment without good cause was discharged for misconduct, or the employee received benefits which were later determined to be improperly paid.

Option 2 — Reimbursement Method **-** Under this method, the employer files quarterly wage reports but makes no tax payments. The employer receives a billing at the end of any calendar quarter in which benefits have been paid to any claimant which are attributable to wages paid by the employer.

Benefits are based on wages paid to a claimant during the first four of the five calendar quarters preceding the initial claim for benefits. Benefits paid during the one-year period following the initial claim are deemed attributable to employers who paid those base period wages. It is, therefore, possible that a claimant could receive benefits attributable to an employer they last worked for two and a half years previous.

Under this option, the employer may not be relieved of benefit charges paid after voluntary and discharge separations, or improperly paid benefits. The employer is responsible for reimbursing the fund the full cost of all benefits paid attributable to wages paid to its employees.

Option 3 — Advanced Reimbursement Method **-**This option is the same as Option 2 except the employer pays a fixed percentage of its total payroll each quarter to create a reserve from which the quarterly billings are paid. Initially, each quarter the employer pays 1 percent of its total payroll. Each year thereafter the quarterly percentage is adjusted up or down to maintain a reserve balance equal to 1 percent of the previous year's total payroll.

Changing Options **-**An employer may change from one option to another at the beginning of any calendar year by filing a written notice with Job Service not later than 30 days prior to the beginning of the year.

An employer who changes from the contributing method (Option 1) to the reimbursing method (Option 2) may not change back to the contributing method for two years.

Employers who switch from the reimbursing method (Option 2 or 3) to the contributing method (Option 1) remain liable for reimbursements to the fund for benefits attributable to wages paid prior to the change.

Employers who change from Option 3 to Option 1 or Option 2 may have any accumulative reserves refunded to them. Reserves accumulated under Option 1 are not refundable. For further information, contact the Tax Section of Job Service at **(701) 328-2814**.

ND State Century Codes website: **http://www.legis.nd.gov/information/statutes/cent-code.html**

COMMON LAW TEST

ND Administrative Code - Chapter 27-02-14 - This rule interprets the "Common Law Test" for determining whether a worker is an employee or an independent contractor for unemployment purposes.

The "Common Law Test" focuses primarily on whether the person for whom the services are performed retains the right to direct and control the methods or details by which the services are performed. Under the "Common Law Test," it is not necessary that such direction and control actually be exercised. The worker is considered an employee if the right to control exists.

Any service performed for another for wages or under any contract of hire is deemed to be employment unless it is shown that the individual performing the service is an independent contractor as determined by the "Common Law Test."

Generally, an employment relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what must be done but how it must be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. However, the right to terminate a contract before completion to prevent and minimize damages for a potential breach or actual breach of contract does not, by itself, suggest an employment relationship. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. The fact that the contract must be performed at a specific location, such as building site, does not, by itself, constitute furnishing a place to work if the nature of the work to be done precludes a separate site or is the customary practice in the industry. In general, if a individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, the individual is an independent contract. An individual performing services as an independent contractor is not as to such services an employee. Individuals such as physicians, lawyers, dentists, veterinarians, construction contracts, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

As an aid to determining whether an individual is an employee under the common law rules, twenty factors or elements have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. These twenty factors have been developed based on an examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. These twenty factors are designed only as guides for determining whether an individual is an employee; special scrutiny is required in applying these twenty factors to assure that formalistic aspects of an arrangement designed to achieve a particular status do not obscure the substance of the arrangement; that is, whether the person or persons for whom the services are performed exercise sufficient control over the individual for the individual to be classified as an employee. These twenty factors are described below:

1. **Instructions:** A person who is required to comply with other persons' instructions about when, where, and how the person is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions.

2. Tr**aining:** Training a person by requiring an experienced employee to work with the person, by corresponding with the person, by requiring the person to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.

3. I**ntegration**: Integration of the person's services into the business operations generally shows that the person is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the persons who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

4. **Services rendered personally:** If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

5. **Hiring, supervising, and paying assistants:** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the persons on the job. However, if one person hires, supervises, and pays the other assistants pursuant to a contract under which the person agrees to provide materials and labor and under which the person is responsible only for the attainment of a result, this factor indicates an independent contractor status.

6. **Continuing relationship:** A continuing relationship between the person and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

7. **Set hours of work:** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.

8. **Full time required:** If the person must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the person spends working and impliedly restrict the person from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

9. **Doing work on the premises of the person or persons for whom the services are performed:** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the person, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the person is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

10. **Order or sequence set:** If a person must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the person is not free to follow the person's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

11. **Oral or written reports:** A requirement that the person submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. With your contract, however, parties can agree that services are to be performed by certain dates and the persons performing those services can be required to report as to the status of the services being performed so that the person for whom the services are

being performed can coordinate other contracts that person may have which are required in the successful total completion of a particular project.

12. **Payment by hour, week, month:** Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

13. **Payment of business or traveling expenses, or both:** If the person or persons for whom the services are performed ordinarily pay the person's business or traveling expenses, or both, the person is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the person's business activities.

14. **Furnishing of tools and materials:** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

15. **Significant investment:** If the person invests in facilities that are used by the person in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the person is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship.

16. **Realization of profit or loss:** A person who can realize a profit or suffer a loss as a result of the person's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the person who cannot is an employee. For example, if the person is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the person is an independent contractor. The risk that a person will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

17. **Working for more than one firm at a time:** If a person performs services under multiple contracts for unrelated persons or firms at the same time, that factor generally indicates that the person is an independent contractor. However, a person who performs services for more than one person may be an employee for each of the persons, especially where such persons are part of the same service arrangement.

18. **Making service available to general public:** The fact that a person makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

19. **Right to discharge:** The right to discharge a person is a factor indicating that the person is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the person to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

20. **Right to terminate:** If the person has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. A contract can be terminated by the mutual agreement of the parties before its completion or by one of the parties to the contract before its completion to prevent a further breach of the contract or to minimize damages. This situation indicates an independent contractor relationship.

A HELPFUL GUIDE TO ASSIST YOU IN COMPLYING WITH THE NORTH DAKOTA COMMON LAW TEST

Anyone in the State of North Dakota may apply to receive verification of status as an independent contractor. An independent contractor does not have to verify status with the Department of Labor, but either party in an independent contractor relationship may do so in order to protect themselves from future liability. In deciding the status of those who apply for verification, the Department of Labor will apply the Common Law test. There is no certain number of the twenty points of the Common Law test that must be met in order to qualify as an independent contractor. There are, however, certain factors that are more important in a decision than others depending upon the specific situation involved. This decision will be based on the relationship as it exists and will, unfortunately, be a subjective decision based on the facts of each relationship. Therefore, no blanket policy will cover all who wish to verify status other than applying the Common Law test as fairly as possible.

North Dakota state law says, "Independent Contractors - Determination made by the Commissioner of Labor. A person working or beginning work as an independent contractor may apply to the Commissioner of Labor to receive verification of independent contractor status. The Commissioner, upon receiving an application, shall review the circumstances of the applicant's job and other relevant information. When the information supports a finding under the "Common Law" test that the applicant will be working or is working as an independent contractor, the Commissioner shall issue a determination to verify the status of the applicant as an independent contractor and shall issue the independent contractor an identification number that will be invalid if the applicant's job changes. If the applicant's job changes, the applicant may reapply for a determination to verify independent contractor status."

If an independent contractor has received verification by the Department of Labor, and at a later date is found to be engaged in an employer/employee relationship by the Department of Labor, Job Service North Dakota, or Workers Compensation Bureau, the finding agency may not require the party determined to be the employer to pay taxes, premiums or wages, other than those required by the contract, or any interest, penalty, or delinquency fee with respect to premiums, wages or taxes retroactive to the date the relationship with the employee began unless, however, the finding agency determines the employer willfully and intentionally entered the relationship with the purpose of avoiding unemployment compensation taxes, worker's compensation insurance premiums or wages.

The finding agency may require the payment of wages, premiums, and taxes for that employee as of the date the order declaring an employment relationship becomes final.

The following guide will assist you in meeting the requirements to be an independent contractor as determined by the Common Law Test. The applicant should use this guide to assist in meeting the requirements of the test. Use of this guide does not guarantee verification.

YOUR GUIDE TO BEING AN INDEPENDENT CONTRACTOR IN NORTH DAKOTA

North Dakota Department of Labor

The 1993 ND Legislative Assembly passed HB 1491 dealing with the status of independent contractors. It provides that either party in an independent contractor relationship can apply to the ND Department of Labor (NDDL) to verify the status of an independent contractor. It also provides for clarification as to the liability of the employer for various employment taxes under certain circumstances.

This Bill also applies to districts. The following information was received from the Commissioner, NDDL. It is very important to districts that accomplish some of their conservation through contractors to thoroughly study this information.

Districts that contract may evaluate their contractor relationship with the 18 factors listed or complete the Independent Contractor Verification Application. If this does not help your district to determine whether the firm or individual is an independent contractor, you can call the State Soil Conservation Committee for assistance or you may send in an application to the Department of Labor for a determination.

The districts determination will determine its responsibility to pay the various employment taxes. Job Service and Workers Compensation continue to audit districts to evaluate the accuracy of payroll records and determine contractor/employee status. It is important that districts be assessing the relationships they have with contractor/employees appropriately.

The determination made by the Commissioner does not have to be followed by either Job Service North Dakota or Workers Compensation Bureau.
Should either Job Service or Workers Compensation determine a district contractor to be an employee following a contractor determination by the NDDL, the district will be exempt from previous Job Service and Workers Compensation employment taxes during the period the NDDL determination was in effect.

Intent of Applicant

1. Do you want to be an independent contractor? ❑ Yes ❑ No

2. Do you understand that as an independent contractor you are **not** eligible for unemployment compensation benefits? ❑ Yes ❑ No

3. Do you understand that as an independent contractor you are **not** eligible for workers compensation insurance? ❑ Yes ☐ No
   (Unless, however, you choose to apply for coverage and pay insurance premiums yourself).

4. Do you understand that you are fully liable for social security contributions and tax withholdings?
   ☐ Yes ☐ No

The following factors should be considered when becoming an independent contractor. Consideration of these factors does not guarantee compliance with and verification by the North Dakota Independent Contractor Common Law Test.

***Degree of control:** The organization or business should not have the right to control the method and manner of the job to be performed. Establishing a standard of quality for the "end result" is permissible and should be detailed prior to the beginning of the relationship in the contract.

***Right to discharge:** The organization or business cannot terminate the contractor as long as the contractor meets the obligations of the contract.

* **Right to delegate work:** The contractor can bring in whomever the contractor wants to accomplish or assist in accomplishing the purpose of the contract.

***Hiring practices:** An independent contractor should have the right to hire and fire assistants that the contractor uses in performing the requirements of the contract.

***Payment practices:** An independent contractor should be paid by the job as opposed to by the hour, week or month.

***Furnish training:** The organization should not provide any type of training for inexperienced workers or the contractor.

***Skill:** Independent contractors are generally viewed as skilled workers.

* **Duration of relationship:** The contractor should be hired for a specified period of time. Continuous work, especially without a contract, implies an employer employee relationship.

*__Control over hours of work:__ An independent contractor should be allowed to determine the hours of work. Compliance with the terms of the contract can meet this requirement.

***Independent trade:** The contractor should be free to work or perform services for any number of persons or firms simultaneously.

*__Furnishing tools:__ The contractor should be able to provide the tools and equipment necessary to perform the work.

*__Place of work:__ If possible, the independent contractor should perform the work off the premises of the business of organization.

*__Profit and loss:__ The contractor should have the opportunity for profit or loss.

*__Intent of the parties:__ The parties' intent to create an independent contractor relationship should be documented.

*__Principal:__ The contractor should be a principal in his or her own business.

*__Sequence of work:__ The contractor should be able to determine the sequence of the work performed outside of the control of the organization or business.

*__Reports required:__ The contractor should not be required to submit regular oral or written reports or to attend organization or business meetings.

*__Same work as regular employees:__ The organization or business should not have the independent contractor do the same type of work as its regular employees.

FEDERAL INDEPENDENT CONTRACTORS VERIFICATION

The ND Department of Labor independent contractor verification is not binding for federal employment tax purposes. The district could still be liable for federal income tax withholding, including FICA, to the Internal Revenue Service (IRS). Districts may also receive a determination from IRS by completing Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

If you have any questions regarding the completion of Form SS-8, please contact the closest IRS office or call **1-800-829-1040**. Mail the completed form to: **Internal Revenue Service, E:6:1428/2428 Stop 4428, 2001 Killebrew Drive 239, Bloomington, MN 55425.** Copies of Form SS-8 can be obtained from and IRS office or by calling**1-800-829-3676** **Job Service would also follow an IRS determination since they are federally funded.

WORKERS COMPENSATION

District Supervisors -All elected and appointed officials receiving supervisors compensation **must** be covered by Workers Compensation Insurance.

POSITIONS COVERED: All elected, appointed and assistant soil conservation district supervisors (positions are covered, not names). **RATE**: 1. $1.26 per $100 of payroll; 2. If supervisor compensation is not paid, a non-paid volunteers account can be utilized at $15 per name with a $125 minimum per year. Coverage to volunteers is not mandatory.

WHEN COVERED: Upon receipt of premium, the North Dakota Workers Compensation Bureau will extend coverage to all persons serving in the capacity of a soil conservation district supervisor during the normal course of employment (duty) including all regular and special meetings, and all functions and activities, and when officially representing either the local soil conservation district, or the North Dakota Association of Soil

Conservation Districts. Coverage is also extended during normal related travel. In all cases, coverage terminates when an individual ceases to hold the position of a soil conservation district supervisor.

PAYMENT: The North Dakota Workers Compensation Bureau will contact each soil conservation district; furnish an application, and bill local districts direct. Premiums shall be paid from local soil conservation district funds.

District Employees - All employees must be covered by Workers Compensation Insurance and premiums shall be paid from soil conservation district funds. All employee wages must be reported to the Workers Compensation Bureau.

The following are a few of the more common classifications used by districts and will be effective July 1, 1997:

Classification Number	Description	Rate Per $100 of Payroll
0003	**Florists, Nurseries, & Gardening Operations** -Florists operating greenhouse and flower and vegetable plant growing under glass or hot bed including sales, delivery and clerical office payroll - Nurseries, all operations - including flowers, vegetable plant and nursery stock growing on an acreage basis and greenhouse operations incidental thereto (no general farming) - Planting of flowers, lawns, small shrubs and garden work - including estimating, drivers and their helpers (excavation, filling or back filling, tree planting, street, road or highway sodding, landscaping & seeding to be separately classified or rated)	**$6.34**
0004	**Tree Trimming and Planting** -Tree trimming, pruning, spraying-including repairing and hauling. -Firewood cutting and splitting -Tree planting, tree transplanting, and tree habitat development - all operations incidental thereto (no general farming)	**$11.29**
0006	**Farming and Ranching** -Grain, dairy, potato, livestock and general farming. -Poultry farming or hatcheries with general farming. -Grass seeding and harvesting. -Fish farming. -Fruit farming, growing, harvesting and care of trees. -Fur farming, mink, fox, etc. General farming operation - by contractor's including hauling.	**$9.02**
0010	**Poisoning - Spraying -Exterminating** -Livestock and crop dusting and spraying (ground level – no flying). -Grasshoppers and rodent poisoning. -Exterminating and termite control service - including shop and estimate of contracts. -Fertilizer -chemical applications - liquid or dry (dealers under 4583). -(Ground level -NO FLYING) -Including all operations incidental thereto (no general farming).	**$4.81**
3360	**Welding - Blacksmithing** -Welding - acetylene, arc and electric - shop and away from shop. -(Welding of structural iron, steel or tower tanks classified under 5040) -Blacksmithing - hand forging, heat treating and horseshoeing shops. -All operations excluding clerical office.	**$9.02**

5603	**Consulting Engineers, Architects and Surveyors** -Architectural engineering service and surveying - office and from office - (not available to construction contractors). -Coal companies, no mining or clerical. -Soil testing and sampling.	**$2.15**
8747	**Traveling Representatives, Attorneys, And State Officials** -Collection agencies field representatives -Inspection agency's field representatives, no estimating. -Insurance - adjusters and salesmen. -Gaming operations. -Labor Union representatives - office and away from office. -Messengers. -Real estate appraisers, salesmen and collectors - office and away from office - no supervision or construction - no estimating. -Social worker N.O.C. -Traveling salesman - including city solicitors and outside salesmen. -Attorneys or juvenile commissioners. -State officials - elected or appointed. Legislative assembly members. -Orchestra, bands, musical organizations, N.O.C. - entire staff - including traveling.	**$1.26**
8747D	**Elected and Appointed**	**$1.26**
8805*	**Clerical Office Employees**	**$0.37**
9002	**Domestics** -Employees including household servants - no farm activity.	**$3.79**
9007	**Building Custodians and Janitor Service** -Janitorial or janitor service N.O.C. - all operations. -Drain cleaning -Lawn maintenance. -Building custodians - all operations incidental thereto. -Cleaning - carpets, rugs, furniture and furnaces, all operations incidental thereto. -Fish hatcheries and research field employees connected with the operations thereof - including superintendents, supervisors, and their helpers - all operations incidental thereto. -Window washers - window cleaning and washing above second story or over 25 feet above ground.	**$7.21**

***Clerical Office Payroll**

Clerical office payroll shall include only the payroll of those employees whose duties are confined solely to office work, having no other duties of any nature in or out of the employer's premises. (This rule is not applicable to the composite classifications in the rate tables.)

Payroll divisions can be used for the other categories listed. For example, a technician’s wages will primarily be reported under 8747, but if he does some tree planting in the spring that portion of his payroll would be reported under 0004. Reporting using division in payroll should provide substantial savings to districts.

Your district may obtain a complete listing of the Workers Compensation Bureau's "Rates and Classifications" booklet which lists all classifications and rules by calling or writing:

Workforce Safety & Insurance
1600 East Century Avenue, Suite 1

Bismarck ND 58503-0644
(701)328-3800 or toll free within ND 1-800-777-5033 or e-mail: ndworkerscomp@nd.gov

POSITION DESCRIPTION EXAMPLE
District Clerk

Introduction: This position is that of a district clerk responsible for performing secretarial and clerical duties in the _____ Soil Conservation District.

Duties & Responsibilities:
* Serves as receptionist to the district and NRCS office.
*Assist supervisors with preparation of the annual budget for the district.
*Maintain adequate records of all receipts and disbursements.
*Prepare monthly comprehensive financial statement to be reviewed by the board (SFN 3819).
*Prepare annual financial statement (SFN 3820) for the State Soil Conservation Committee.
*Prepare financial report necessary to apply for mill levy.
*Keep record of and reimburse supervisors expenses as allowable.
*Prepare all billings for district services.
*Maintain personnel payroll records.
*Issue payroll checks.
*File required payroll reports.
*Maintain district property records.
*Provide communication and correspond with board members as necessary to keep them informed of important district and conservation issues.
*Answer routine correspondence.
*Attend all board meetings.
*Assemble all regular and special meeting minutes.
*Receive and route mail.
*Assist with preparing agenda for board meetings and sent out notice of meeting.
*Assist in the planning and preparation for the annual meeting and banquet.
*Determine need for office supplies and order needed materials.
*Make reservations for attendance at training sessions and conventions.
*Assist in preparing news releases of district activities.
*Perform other related duties as requested by the district board.

Supervision: This position is the direct responsibility of the board of supervisors. However, other district employees or the NRCS district conservationist in the office may be designated to be directly responsible for the day to day duties of this position.

Performance Review: Your performance of each duty in this position will be evaluated against the requirements developed for your position. A formal review will be completed by your supervisor on a yearly basis and will be discussed with you. Your performance rating is an overall evaluation of your performance in the judgment of your supervisor. It will be the basis for any merit pay increases granted by the district board.

POSITION DESCRIPTION EXAMPLE
District Technician

Introduction: This position is that of a District Technician which will provide technical assistance for the _____ _____Soil Conservation District.

Duties & Responsibilities:
* Promote conservation practices through cooperator contact and follow-up.
*Maintains personal contacts with cooperators.

*Coordinates the district equipment and rental program.
*Prepares and presents conservation programs to schools, groups and agencies.
*Assists with report writing and conservation plan development.
*Participate in developing districts annual and long range plan of work.
*Report monthly to district board on activities and accomplishments.
*Publicize conservation efforts in cooperation with NRCS district conservationist and other district staff through news articles.
*Record farmer contacts and significant follow-up in cooperator file assistance notes.
*Manage district programs.
*Provide assistance to cooperators applying practices.
*Seek follow-up on practices installed to evaluate their effectiveness.
*Operate district and NRCS equipment safely for authorized purposes only.
*Become familiar with NRCS field office technical guide for conservation practice Specifications.
*Be familiar with the published soil survey book and its uses in planning conservation practices.
*Perform other related duties as requested by the district board.

Supervision: This position is the direct responsibility of the board of supervisors. However, other district employees or the NRCS district conservationist in the office may be designated to be directly responsible for the day to day duties of this position.

Performance Review: Your performance of each duty in this position will be evaluated against the requirements developed for your position. A formal review will be completed by your supervisor on a yearly basis and will be discussed with you. Your performance rating is an overall evaluation of your performance in the judgment of your supervisor. It will be the basis for any merit pay increases granted by the district board.

POSITION DESCRIPTION EXAMPLE

District Manager

Introduction: This position is that of a district manager for performing management functions for the _____ Soil Conservation District.

Duties & Responsibilities:

*In cooperation with various federal, state and local agencies assesses the need for conservation work within the District and recommends actions and programs to meet these needs.
*Prepares a draft annual plan of work and a proposed budget for review by the district board.
*Prepare grant applications for outside financial assistance as requested by the district board.
*Provide guidance for district board to secure adequate insurance on district equipment and liability.
*Identifies sources and recommends actions for the district board to secure the needed personnel for district operations.
*Maintains a cooperative relationship with all natural resource agencies operating within the district.
*Supervises and directs the work of district personnel.
*Initiates and directs a public information program through individual contacts, tours, district newsletter, newspaper, radio, public schools, youth groups and others.
*Responsible for the proper maintenance and use of all district equipment and facilities.
*Coordinates request for district assistance with NRCS district conservationist and other appropriate resource agencies.
*Keeps abreast of all federal, state and local laws that affect the conservation work within the district.
*Maintain adequate records and prepares various reports.
*Keeps district board informed of action taken, trends in conservation work and issues in which the district may have an interest or wish to become involved.
*Coordinates district involvement and assistance in a variety of programs and activities with NRCS district conservationist, State Soil Conservation Committee and others.
*Assumes responsibility and exercise own initiative in furthering district programs.

*Report monthly to district board on activities and accomplishments.
* Perform other related duties as requested by district board.

Supervision: This position is the direct responsibility of the board of supervisors.

Performance Review: Your performance of each duty in this position will be evaluated against the requirements developed for your position. A formal review will be completed by your supervisor on a yearly basis and will be discussed with you. Our performance rating is an overall evaluation of your performance in the judgment of your supervisor. It will be the basis for any merit pay increases granted by the district board.

VETERANS PREFERENCE

General Information

- North Dakota Century Code provides a preference in public employment for wartime veterans and in some instances, the spouses of wartime veterans.

- Public employment not only includes temporary and permanent employment with the State of North Dakota, but all **political subdivisions** such as (soil conservation districts), cities and counties.

- Exceptions to the law are limited to the following types of positions: superintendent of schools, teacher, chief deputy or private secretary of elected or appointed officials, or temporary committee and individual or group appointments made by the Governor or the legislative assembly.

- Veteran, for the purposes of employment preference means **a North Dakota resident who has served in the active military forces during a period of war**, or who received the armed forces expeditionary or other campaign service medal during an emergency condition, and must have been released therefrom under honorable conditions.

- Disabled veteran means a veteran who meets the requirements listed above who has a service-connected disability as determined by the United States Veterans Administration and the disability must exist at the time of application.

- Eligible spouse means the un-remarried spouse of a deceased veteran who died while in service, or later died from a service-connected cause or causes; or the spouse of a disabled veteran as defined above, who because of his or her disability is unable to exercise his or her right to employment preference.

- All veterans claiming preference **must** include proof of their veteran's status. If claiming disabled veterans' preference, the veteran must include proof of their disability. Additional documentation is required if claiming eligibility as the spouse of a deceased or disabled veteran. Veterans who meet the advertised minimum qualifications must be employed over other qualified non-veterans. Veterans, who meet the minimum qualifications of positions and are not employed, must be notified by certified mail that employment was refused. These veterans may appeal the non-selection.

Recommendations:

Soil conservation districts should be specific when minimum qualifications are established for vacancies.

Soil conservation districts should use an application form which asks applicants if they wish to claim veterans' preference and describes documentation required for the claim.

Soil conservation districts should be sure to notify qualified veterans who are not selected by certified mail.

For Further information contact: North Dakota Veterans Affair Department, 1411 32nd Street South, Fargo, ND 58106-9003; (701) 239-7165

ND State Century Codes website: **http://www.legis.nd.gov/information/statutes/cent-code.html**

NEPOTISM LAW

N.D.C.C. 44-04-09

North Dakota Soil Conservation Districts must comply with the Nepotism Law.

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. As used in this section, "supervisory capacity" means the authority to appoint, employ, hire, assign, transfer, promote, evaluate, reward, discipline, demote, or terminate. As used in this section, "evaluate" does not include evaluations by peers or subordinates. This section does not apply to an employment relationship or contract entered before the effective date of this Act; 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. District supervisor's relatives as identified above may not be employed by the district.

TEMPORARY EMPLOYMENT

General Information

- Temporary employment is not exhaustively defined in the North Dakota Century Code. However, the following conditions generally characterize temporary employment with the state:
- Temporary employees do not occupy regularly funded positions.
- Temporary employees perform work that usually is limited in duration.
- Temporary employees normally do not receive benefits such as annual leave, sick leave, and health insurance.
- The hour's temporary employee's work may vary considerably from as few as one hour per month to greater than forty hours per week.
- Temporary employees, who become regular full time employees, are given credit for their temporary service for the purpose of determining their annual leave accrual date.

Recommendation:

Soil conservation districts should advise a new temporary employee of the anticipated length of employment.

PERS BENEFIT PROGRAMS

General Information

Group Medical Insurance is available to soil conservation district employees who meet the eligibility requirements of being a permanent employee of the district. The health insurance program is also available to soil conservation district supervisors (elected and appointed) so long as they are being compensated for their services.

Eligible employees (full time) is defined under the health program as any employee who is at least 18 years of age working at least 17.5 hours per week, 5 or more months out of the calendar year, and filling an approved and regularly funded position. All employees who meet this definition must be offered the plan without evidence of insurability. If the employees do not accept at the time the district enters the plan and elect to join later, they may need to meet underwriting provisions (provide evidence of insurability).

There can be no other group health plan offered in conjunction with the (state's) Dakota Plan; however, supplemental plans such as dental or vision plans may be offered.

An Employer Participation Agreement will have to be signed to participate in the health insurance plan.

Upon entering the program, a soil conservation district is committing its participation to the plan for 5 years. If a district decides to terminate the agreement prior to completing the 5 years, an assessment will be made to determine if the claims for a district's group exceeded its premiums. If the expenses exceed the income, the district will have to pay the difference before being able to exit the plan. At the end of the 5 years a soil conservation district can go off the plan whenever it chooses without paying any difference between claims paid and premiums collected.

Part-time and temporary soil conservation district employees are eligible to join the state's group health insurance program, at their own expense. However, they may need to prove evidence of insurability. Part-time and temporary employees are defined under this program as any employee who works under 17.5 hours per week.

There is no minimum employer contribution required; however, any employer contribution must be applied to all contract participants in the same manner. The only exception to this requirement is that the employer may pro-rate the premium contribution based on the number of hours worked.

Participation in the state's group health insurance program is optional for new district employees.

Group Retirement Plan

A soil conservation district may participate in the retirement program by paying 9.12% (monthly) of salary for each eligible employee. If offered by a district, the retirement program must be offered to all eligible employees.

Eligible employee for retirement participation purposes is defined in the Century Code as an employee who is at least 18 years of age, who works 20 or more hours per week, 5 or more months out of the year, and is filling an approved and regularly funded position.

The required employer contribution is **5.12%** and the employee contribution is **4%.** The soil conservation district may choose to pay any portion of the employee contribution in addition to the employee's contribution or require the employee to pay their contribution of **4%**.

Temporary employees can participate in the state's retirement plan. However, it is the employee's responsibility to pay the 9.12% retirement contribution.

Soil conservation district supervisors (elected and appointed) may participate in the retirement plan.

On entering the retirement program, a contract must be signed which sets forth the terms and conditions for participation.

Contracting for participation in the state's group retirement program requires that all future eligible employees must participate in the retirement program.

Group Life Insurance
If the employer is participating in the life insurance program, each employee will receive basic life insurance coverage in the amount of $1,300. The premium is $0.28 a month and is paid by the employer. An employee may purchase supplemental, basic dependent and supplemental spouse life insurance.

Deferred Compensation
The Deferred Compensation Plan is a voluntary supplemental retirement savings program offered to state employees and employees of participating political sub-divisions. This program allows employees to put a portion of their salaries in "savings" before state and federal tax is deducted. There is a $25.00 per month minimum contribution.

Group Dental plan is not currently available to employees of political subdivisions.
For further information on any of the PERS benefit programs, contact:
North Dakota Public Employees Retirement System (NDPERS),
400 East Broadway Avenue, Suite 505 - PO Box 1214
Bismarck, ND 58502 701-328-3900, or 1-800-803-7377

HOLIDAYS:

General Information North Dakota has 10 statutory holidays on which state offices are closed.

- January 1; **New Year's Day**
- The third Monday of January; **Martin Luther King, Jr. Day**
- The third Monday of February; Recognition of the **birthday of George Washington**
- The Friday preceding Easter Sunday; **Good Friday**
- The last Monday of May; **Memorial Day**
- July 4th; **Independence Day**
- The first Monday of September; **Labor Day**
- November 11th; **Veteran's Day**
- The fourth Thursday of November; **Thanksgiving Day**
- December 25th; **Christmas Day**

If a holiday falls on Saturday or Sunday, the preceding Friday or following Monday, respectively, is considered the holiday. State offices also close at noon on December 24. This is an office closure, not a holiday. Noon closure applies on December 24th only, and is not moved to the preceding Friday or following Monday as referenced above for holidays.

Summary:
The state's holidays are provided only to show what is available and what a soil conservation district may want to consider in setting policy for its employees. Soil conservation districts may adopt this holiday schedule or a schedule of their own.

ANNUAL LEAVE:

General Information
Annual leave is an approved absence from work with pay for a vacation, or for other purposes.
Annual leave is earned by each permanent employee of the state at the rate of between 8 and 16 hours a month depending on the employee's length of service. The following leave accrual schedule is recommended:

Years of Service	*Hours Per Month*	*Hours Per Year*
0 through 3	*8*	*96*
4 through 7	*10*	*120*
8 through 12	*12*	*144*
13 through 18	*14*	*168*
over 18	*16*	*192*

Annual leave accrues on a prorated basis for a fraction of a month. Only **240 hours** of annual leave may be carried over from one year to the next, according to the cutoff dates established. Hours in excess of 240 hours will be lost. All accrued annual leave is payable upon resignation or termination. Temporary employees do not earn annual leave. However, if a temporary employee becomes permanent, credit will be given by the agency for the employee' prior length of service, for the purpose of determining the annual leave accrual rate.

Summary:
The state's annual leave policy is provided only to show what is available and what a soil conservation district may want to consider in setting policy for its employees. Soil conservation districts may adopt this policy or a policy of their own.

SICK LEAVE

General Information

--Sick leave is an approved absence from work with pay when an employee is ill or in the need of medical care. In certain circumstances, up to 40 hours may be used when there is an illness or medical need in the employee's family.

--Sick leave is earned by each permanent employee of the state at the standard rate of eight hours a month.
--Sick leave accrues on a prorated basis for a fraction of a month.
--All accrued unused sick leave may be carried over from one year to the next.
--If an employee leaves the service of the state after ten continuous years of state employment, the employee must be paid for 10% of their accrued unused sick leave.
--Temporary employees do not earn sick leave.

Summary:
The state's sick leave policy is provided only to show what is available and what a soil conservation district may want to consider in setting policy for its employees. Soil conservation districts may adopt this policy or a policy of their own.

FAMILY LEAVE

General Information

--Family leave is provided for by state law and by federal law - the state Uncompensated Family Leave Act of 1989 and Medical Leave Act of 1993. The following is a combination of the provisions in the federal and state laws that authorize family medical leave.

--Family leave is an unpaid leave of absence available to an employee for the birth, adoption or foster placement of a child; or for the serious health condition of a parent, child, and spouse of employee.
--Family leave is available to all employees who have worked for one year, at least 20 hours per week. The maximum length of leave available is 16 weeks in a twelve-month period, which is prorated for part-time employees.
--When leave is completed, employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
--Certification may be required by the agency; however, it is limited to stating only that: a serious health condition exists, the date of commencement and probable duration; or the medical facts to the best of the provider's knowledge.

Enforcement: The U. S. Department of Labor is authorized to investigate and resolve complaints of violations; an eligible employee may bring to a civil action against an employer for violations; the Act does not affect any federal or state law prohibiting discrimination; or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

***References**: N.D.C.C. 54-52-4*
Public Law 103-3 (Federal Family and Medical Leave Act)

Recommendation: Soil conservation districts must comply with this policy.

FUNERAL LEAVE:

General Information

Funeral leave is a leave of absence with pay of up to twenty-four working hours that may be granted, at the discretion of the appointing authority, to an employee to attend or make arrangements for a funeral, as a result of a death in the employee's family, or in the family of an employee's spouse.

"Family" means the husband, wife, son, daughter, father, mother, stepparents, brother, sister, grandparents, grandchildren, stepchildren, foster parents, foster children, daughter-in-law, and son-in-law of the employee and employee's spouse.

Funeral leave is not considered as sick leave or annual leave.

Summary

The State's funeral leave policy is provided only to show what is available and what a soil conservation district may want to consider in setting policy for its employees. Soil Conservation districts may adopt this policy or a policy of their own.

JURY and WITNESS LEAVE

General Information

--Jury Duty Leave is an approved absence from work with pay (minus any jury duty fee received) for the purpose of serving on jury duty.
--An employee may use accrued annual leave to perform jury duty and may then keep any jury duty fee paid.
--Witness Leave is an approved absence with pay to appear as a witness or expert witness on behalf of the employer.
--An employee may not retain any witness fee while on approved paid witness leave. An employee who performs witness duties unrelated to the employee's official capacity must do so in an annual leave or leave without pay status.
--Law enforcement personnel performing duties as a witness in an official capacity in a criminal case are performing normal duties and may not retain any witness fee.
--An employee serving as a witness or expert witness, even if the employee is on annual leave or leave without pay, may be reimbursed for mileage, meals, and lodging from only one source.

Recommendations: Employees who receive a fee for serving on a jury and who do not use annual leave, should keep the check and notify the agency's payroll clerk. The appropriate amount will then be deducted from the employee's regular pay. **Reference:** NDCC 54-44.3-12(1d) and NDAC 4-07-16

Summary: The state's jury and witness leave policy is provided only to show what is available and what a soil conservation district may want to consider in setting policy for its employees. Soil conservation districts may adopt this policy or a policy of their own.

DISCIPLINE:

General Information

Discipline is a process used to correct an employee's job performance or for a violation of rules or standards. The use of disciplinary measures must be for "cause" which means conduct related to the employee's job duties, job performance or working relationships which is detrimental to the discipline and efficiency of the service in which the employee is or was engaged. The disciplinary actions must be progressive in nature, beginning with the least severe appropriate action and progressing to the more severe, for repeated instances of job performance, or for repeated violations of the same rule or standard. Progressive discipline may not be appropriate when an infraction or a violation is of a serious nature. Written documentation is required to support all disciplinary actions.

Recommendations: The most effective approach to use in applying discipline is to focus on correcting the inappropriate behavior. Discipline should always be administered in an appropriate setting, and after the relevant facts have been determined.

PERSONNEL RECORDS RETENTION:

General Requirements

The following retention periods are ***recommended*** for specific personnel documents:

Application/Resumes (employed)	6 years after termination
Position Descriptions	6 years after superseded
Employee Evaluations	6 years after action
Retirement Correspondence	6 years after action
Insurance Enrollment Notices	6 years after action
Employee Earnings Record	Entire duration
Employee W-2 Forms	6 years and current
Quarterly Wage Report	6 years and current
Disciplinary Actions Taken	6 years after action
Leave Reports (annual and sick)	3 years
Report of Accident	6 years and current
Applications/Resumes (not hired)	3 years
Training Records	Permanent

Recommendation: If there is any legal action regarding an employee or former employee initiated by anyone, all records regarding the employee or former employee should be retained until the completion of the legal action or the end of the retention period, whichever is later.

District Employee Service Award Program - The Committee recommends the following service award program developed for state employees under the authority of ND Administrative Code 4-07-18. This provides an alternative to bonus's which are illegal under state law. Each SCD may implement and administer either of the service award programs (length of service/retirement) for their employees. THE COMMITTEE RECOMMENDS THAT DISTRICTS NOT EXCEED THE AMOUNTS ALLOWED BY THE STATE SERVICE AWARD PROGRAM. The required service award program may not be retroactive. However, all times worked by a district employee in the employment of the district prior to the adoption of a district service award program must be counted toward any future service award.

The State's Service Award Program provides: Service required to receive award. An employee must have completed the equivalent of five, ten, fifteen, twenty, twenty-five, thirty-five, or forty years of full-time employment with the state in order to receive a service award. An employee, who leaves employment with the state and then returns, again begins to accumulate time. That time must be added to the employee's previous service and applied to any future service award.

Service award types: The types of service awards that are given to employees must be provided as follows:
-Following completion of five years; certificate or plaque, and a gift not to exceed a value of $25.

-Following the completion of ten years; certificate or plaque, and a gift not to exceed a value of $50.
-Following the completion of fifteen years; certificate or plaque, and a gift not to exceed a value of $75.
-Following the completion of twenty years; certification or plaque, and a gift not to exceed a value of $200.
-Following the completion of twenty-five years; certificate or plaque, and a gift not to exceed a value of $200.
-Following the completion of thirty years; certificate or plaque, and a gift not to exceed a value of $200.
-Following the completion of thirty-five years; certificate or plaque, and a gift not to exceed a value of $200.
-Following the completion of forty years; certificate or plaque, and a gift not to exceed a value of $200.

Retirement Awards: A retirement award must be provided to an employee who has a minimum of fifteen years of service, and who has not been previously recognized for a retirement by the state, as follows:
- A plaque with bronzed certificate or bronzed letter signed by the Governor.
- A gift with a value not to exceed $200.
- A farewell coffee party, provided that the employee agrees to participate.

An agency may not provide cash to an employee as part of a service award program. An agency may, however, provide a gift certificate.

Districts may individually choose to adopt an employee service award program and/or retirement award program. If Districts choose to adopt employee award programs, the Committee recommends they use the same or lower gift values as indicated above in the state programs. Districts may also provide service awards for full-time or part-time employment.

SOIL CONSERVATION DISTRICT HUMAN RESOURCES POLICY - The State Soil Conservation Committee adopted a human resources policy for the State Soil Conservation Committee and North Dakota's Soil Conservation Districts.

The human resources policy adopted for the districts is virtually identical to the policy the State Soil Conservation Committee adopted with minor changes for district names and positions and is modeled after the NACD Human Resources Policy developed for SCDs nationwide. Your district may have already adopted a policy similar to the attached; however, the State Soil Conservation Committee determined that all districts should have a uniform human resources policy.

Please review the policy at your next board meeting and fill in the appropriate information in the blanks provided. You should also inform all district staff of this policy which should be accessible to them as well. Your district may want to keep a copy of the policy in your Supervisors Handbook.

I. Nondiscrimination -- Equal Opportunity

The Soil Conservation District does not discriminate against any person on the basis of race, religion, color, gender, national origin, ancestry, age, marital status, veteran status or disability. This policy covers all programs, services, and procedures of the District, including employment.

The District will aggressively pursue equal opportunity for all qualified or qualifiable employees and applicants for employment. Positive action will continue to be taken to ensure conformance to the policies set forth herein. The objective of this policy is to obtain individuals qualified and trainable for positions by virtue of education, training, experience and personal qualifications without regard to race, religion, color, gender, sexual orientation, national origin, ancestry, age, marital status, veteran status or disability. Its further objective is to maintain a workplace free from discrimination or harassment in any form.

II. Harassment

A. General

Harassment in any form is an unacceptable behavior and will not be tolerated by the District. In general, harassment is any conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Harassment is defined to include: participating in coercive or repeated, unsolicited and unwelcome verbal comments or gestures; or using implicit or explicit coercive behavior in the process of conducting business, or to control, influence or affect the career, salary or job of an employee.

Harassment includes such unwelcome behavior as: verbal abuse; insults; suggestive, demeaning or degrading comments; jokes; notes or picture displays alluding to race, religion, color, gender, sexual orientation, national origin, ancestry, age, marital status, veteran status or disability. Harassment may also take the form of physical aggressiveness, threats or other intimidating behaviors.

B. Sexual Harassment

Sexual harassment is a specific type of discrimination based on sex, and is prohibited by Section 703 of Title VII of the Civil Rights Act of 1964, as amended. Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:
----submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment, like other forms of harassment, includes: coercive or repeated, unsolicited and unwelcome verbal comments, gestures or physical contacts of a sexual nature; or using implicit or explicit coercive sexual behavior in the process of conducting business, or to control, influence or affect the career, salary or job of an employee. It can also include: verbal abuse, insults, whistles, or suggestive comments; jokes; notes or pictures; touching and physical aggressiveness; pressure for dates; or threats or sexual assault.

The rules and guidelines concerning sexual harassment are not confined just to the office, but also apply to business trips, meetings and conferences away from the regular workplace, and off-the-clock, work-related social activities.

C. Policy

Supervisors, employees and others affiliated with the District must maintain high standards of conduct at all times. Any such individual engaging in harassing behavior or activities is subject to disciplinary action, which may include removal from office or employment. Managers and supervisors who tolerate such behavior, who fail to take appropriate action on reports of harassment, or who retaliate against individuals who report incidents or file complaints of harassment are also subject to disciplinary action for failure to perform their supervisory or managerial duties.

This District policy applies to supervisors, employees and others affiliated with the District. It also applies in their working relationships with non-District employees, contractors and cooperators.

D. Complaint Procedures

Persons who believe that they are being, or have been, subjected to harassing or discriminatory behavior should report the incident's) to their immediate supervisor or to the District _____. If a complainant's supervisor cannot satisfactorily resolve a complaint, it should be brought to the attention of the District Chair who will work with them to attempt a resolution. Throughout any harassment resolution process, the confidentiality of the complainant(s) and witness(es) will be maintained.

Every attempt will be made to satisfactorily resolve matters internally at the initial stage of a complaint. However, other alternatives are available to a complainant if he or she is not satisfied with District-proposed resolution. An individual may file a formal complaint through the appropriate state human rights commission within 300 days of an incident, or with the US Equal Employment Opportunity Commission within 300 days of an incident.

E. Sanctions and Disciplines

Any District supervisor or employee who violates this policy either by engaging in such previously defined inappropriate conduct, or by allowing such conduct to go unaddressed, will be subject to disciplinary actions. Such actions include, but are not limited to, counseling, reprimands, suspensions without pay and/or removal from office or termination of employment.

F. Contacts:

District _____*: (position)*
_____ (name of individual responsible)
_____ Soil Conservation District
_____ (address) _____ (city, state and zip)
_____ (telephone number)

ND Equal Employment Opportunity Director:
ND Department of Labor 600 East Boulevard Avenue - 6th Floor
Bismarck, ND 58505-0340; **(701) 328-2660 / (800) 582-8032 /(800) 366-6888 TTY** *US Equal Employment Opportunity Commission:* 1801 L Street NW
Washington, DC 20507; **(800) 669-330/ (800) 800-3302 TDD**

DISCRIMINATION: ND Century Code Website - http://www.legis.nd.gov/information/statutes/cent-code.html Chapter 14-02.4

14-02.4-01. State policy against discrimination.
14-02.4-02. Definitions.
14-02.4-03. Employer's discriminatory practices.
14-02.4-04. Employment agency's discriminatory practices.
14-02.4-05. Labor organization's discriminatory practices.
14-02.4-06. Certain employment advertising deemed discriminatory.
14-02.4-07. Requiring security clearance not discriminatory.
14-02.4-08. Qualification based on religion, sex, national origin, physical or mental handicap, or marital status.
14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory.
14-02.4-10. Employment of individual -- Exceptions -- Physical examination -- Investigation of medical history.
14-02.4-11. Rights of veterans.
14-02.4-12. Discriminatory housing practices by owner or agent.
14-02.4-13. Discriminatory housing practice by financial institution or lender.
14-02.4-14. Public accommodations -- Discriminatory practices.
14-02.4-15. Public services -- Discriminatory practices.
14-02.4-16. Advertising public accommodations or services -- Discriminatory practices --Exceptions.
14-02.4-17. Credit transactions -- Discriminatory practices.
14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination - Threats or reprisals.
14-02.4-19. Actions -- Limitations.
14-02.4-20. Relief.
14-02.4-21. Optional mediation by department of labor -- Relief -- Appeals.

State policy against discrimination

14-02.4-01. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance,

or 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; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination, or coerce others to discriminate.
Source: S.L. 1983, ch. 173, § 1; 1991, ch. 142, § 1; 1993, ch. 140, § 1.

14-02.4-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:
*"Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
*"Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
*"Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental handicap, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

-Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;

-Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
-That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

*"Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policy making level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.

*"Employer" means a person within the state who employs one or more employees for more than one quarter of the year, and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.
*"Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees' opportunity to work for an employer and includes any agent of the person.

*Handicap" means an impairment that substantially limits one or more major life activities. The term includes having a record of such an impairment or being regarded as having such an impairment.

*"Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

*“National origin” means the place of birth of an individual or any of the individual's lineal ancestors.

*“Otherwise qualified person” means a person who is capable of performing the essential functions of the particular employment in question.

*“Person” means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public corporation, and the state and political subdivision and agency thereof.

*“Public accommodation” means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. “Public accommodation” does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a “public accommodation” during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.

*“Public service” means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.

*“Real estate broker” and “real estate salesman” means a real estate broker and real estate salesman as defined in section 43-23-06.1.

*“Real property” means a right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.

* "Reasonable accommodations" means accommodations by an employer that do not: Threaten the health or safety of the handicapped individual or others; Contradict a business necessity of the employer; or Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.

* “Sex” includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

*“Status with regard to public assistance” means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements. **Source:** S.L. 1983, ch. 173, § 2; 1989, ch. 174, § 1; 1991, ch. 142, § 2; 1991, ch. 143, § 1; 1993 ch. 54, § 106.

14-02.4-03. Employer’s discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental handicap, status with respect to marriage or public assistance, or 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. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy making position, if the employee is entitled to an immediate no forfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least forty-four thousand dollars. **Source:** S.L. 1983, ch. 173, § 3; 1989, ch. 174, § 2; 1991, ch. 142, § 3; 1993, ch. 140, § 2.

Physician Suffering from Addiction. Assuming argue do that alcoholism and drug addiction are handicaps under this chapter and that the defendants' actions in requiring physician to take leave and to secure additional patient care training were because of those handicaps, as a matter of law, the physician was not the victim of a discriminatory practice because the defendants' actions were based on "a bona fide occupational qualification reasonably necessary" for a physician. Soentgen v. Quain & Ramstad Clinic (1991) 467 NW 2d 73.

ND State Century Codes website: **http://www.legis.nd.gov/information/statutes/cent-code.html**

14-02.4-04. Employment agency's discriminatory practices.
It is a discriminatory practice for an employment agency to accord adverse or unequal treatment to a person in connection with an application for employment, referral, or request for assistance in procurement of employees because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.
Source: S.L. 1983, ch. 173, § 4.

14-02.4-05. Labor organization's discriminatory practices.
It is a discriminatory practice for a labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of employment because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.
Source: S.L. 1983, ch. 173, § 5.

14-02.4-06. Certain employment advertising deemed discriminatory.
It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or who participate in lawful activity off the employer's premises during nonworking hours which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited. **Source:** S.L. 1983, ch. 173, § 6; 1991, ch. 142, § 4; 1993, ch. 140, § 3.

14-02.4-07. Requiring security clearance not discriminatory.
Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, for an employer to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment in a position if the occupancy of the position, or access to the premises upon which the duties of the position is performed, is subject to a requirement imposed in the interest of the national security of the United States under a security program administered under a statute of the United States or an executive order of the president and the individual has not fulfilled or has ceased to fulfill that requirement. **Source:** S.L. 1983, ch. 173, § 7.

14-02.4-08. Qualification based on religion, sex, national origin, physical or mental handicap, or marital status.
Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental handicap, or marital status in those circumstances where religion, sex, national origin, physical or mental handicap, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during

nonworking hours and which is not in direct conflict with the essential business-related interests of the employer, if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer. **Source:** S.L. 1983, ch. 173, § 8; 1991, ch. 142, § 5; 1993, ch. 140, § 4.

Physician Suffering from Addiction.
Assuming arguendo that alcoholism and drug addiction are handicaps under this chapter and that the defendants' actions in requiring physician to take leave and to secure additional patient care training were because of those handicaps, as a matter of law, the physician was not the victim of a discriminatory practice because the defendants' actions were based on "a bona fide occupational qualification reasonably necessary" for a physician. Soentgen v. Quain & Ramstad Clinic (1991) 467 NW 2d 73.

14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; or for an employer to give and to act upon the results of any professionally developed ability test; provided, that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours. **Source:** S.L. 1983, ch. 173, § 9; 1991, ch. 142, § 6.

14-02.4-10. Employment of individual -- Exceptions -- Physical examination -- Investigation of medical history.

*Sections 14-02.4-03 through 14-02.4-06 do not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or the domestic service of a person.
*The employment of one person in place of another, standing by itself, is not evidence of a discriminatory practice.
*It is not discriminatory practice for an employer, employment agency, or labor organization to: (a. Require a person to undergo physical examination for the purpose of determining the person's capability to perform available employment; or (b. Conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment. **Source:** S.L. 1983, ch. 173, § 10.

14-02.4-11. Rights of veterans. Nothing contained in sections 14-02.4-03 through 14-02.4-06 repeals or modifies a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans. **Source:** S.L. 1983, ch. 173, § 11.

14-02.4-12. Discriminatory housing practices by owner or agent. It is discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed, or trust, or will to: (1.) Refuse to transfer an interest in real property or housing accommodation to a person because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance; (2.) Discriminate against a person in the terms, conditions, or privileges f the transfer of an interest in real property or housing accommodation because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance; or (3.) Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.

Source: S.L. 1983, ch. 173, § 12. **Collateral References.** State civil rights legislation prohibiting sex discrimination in housing, 81 ALR 4th 205.

14-02.4-13. Discriminatory housing practice by financial institution or lender.
It is a discriminatory practice for a person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of real property to discriminate in lending or financial assistance decisions, or in the extension of services in connection therewith, based on the race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance of the person seeking the loan or financial assistance. **Source:** S.L. 1983, ch. 173, § 13.

14-02.4-14. Public accommodations -- Discriminatory practices.
It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefore, the scope and equality thereof, or the terms and conditions under which the same are made available, because of the person's race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance. **Source:** S.L. 1983, ch. 173, § 14; 1993, ch. 45, § 2

14-02.4-15. Public services -- Discriminatory practices. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to a person access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in connection therewith because of the person's race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance. **Source:** S.L. 1983, ch. 173, § 15.

14-02.4-16. Advertising public accommodations or services -- Discriminatory practices -- Exceptions.
It is a discriminatory practice for a person to advertise or in any other manner indicate or publicize that the patronage of persons of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not prohibit a notice or advertisement banning minors from places where alcoholic beverages are being served. **Source:** S.L. 1983, ch. 173, § 16.

14-02.4-17. Credit transactions -- Discriminatory practices. It is a discriminatory practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691], for a person, whether acting as an individual or for another, to deny credit, increase the charges or fees for or collateral required to secure credit, restrict the amount or use of credit extended, impose different terms or conditions with respect to the credit extended to a person, or item or service related thereto because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance. This section does not prohibit a party to a credit transaction from considering the credit history of a person or from taking reasonable action thereon. **Source:** S.L. 1983, ch. 173, § 17.

14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination -- Threats or reprisals.
It is a discriminatory practice for a person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making record or inquiry, or by use of a device whatever to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental handicap, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours. **Source:** S.L. 1983, ch. 173, § 18; 1991, ch. 142, § 7.

14-02.4-19. Actions -- Limitations.
Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to such practice are maintained and administered, or in the judicial district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to an employer's discriminatory practice may bring a complaint of discriminating employment practices under this chapter to the department of labor within three hundred days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to housing or public accommodations or services may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, or in the judicial district in which the person would have obtained housing or public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing. **Source:** S.L. 1983, ch. 173, § 19; 1991, ch. 144, § 1.

14-02.4-20. Relief. If the court determines that the respondent has engaged in or is engaging in an unlawful practice, the court may enjoin the respondent from engaging in such unlawful practice and order such appropriate relief as will be appropriate which may include, but is not limited to, temporary or permanent injunctions, equitable relief, and back pay limited to no more than two years from the date the complainant has filed a sworn charge with the equal employment opportunity commission or filed the complaint in the state court. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. In any action or proceeding under this chapter the court may grant, in its discretion, the prevailing party a reasonable attorney's fee as part of the costs. **Source:** S.L. 1983, ch. 173, § 20.

Collateral References.
Damages and other relief under state legislation forbidding job discrimination on account of handicap, 78 ALR 4th 435.

14-02.4-21. Optional mediation by department of labor -- Relief -- Appeals.
The department of labor may receive complaints of discriminating employment practices under this chapter. If the commissioner of labor or the commissioner's representative determines the claim of discriminating employment practices is valid, the commissioner may prohibit the employer from engaging in the discriminating employment practice and order appropriate relief such as an injunction, equitable relief, or back pay. Earnings or potential earned income by the employee who was the object of the discrimination will reduce the back pay granted. A party may appeal a decision of the commissioner to the district court in the district in which the complaining employee was employed at the time of the alleged discriminatory practice. This chapter does not prohibit or require a person to file a complaint with the department of labor before using the provisions of this chapter. **Source:** S.L. 1983, ch. 173, § 21; 1991, ch. 144, § 2.

Construction
Chapter 48-02 - ND State Century Codes website: **http://www.legis.nd.gov/information/statutes/cent-code.html**
48-02-19. Public buildings and facilities -- Statement of compliance with accessibility guidelines.
State agencies and governing bodies of political subdivisions shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.
Source: S.L. 1973, ch. 376, § 1; 1975, ch. 428, § 1; 1977, ch. 330, § 2; 1979, ch. 493, § 1; 1983, ch. 511, § 3; 1989, ch. 563, § 1; 1991, ch. 210, § 3; 1993, ch. 261, § 3.

State Building Code
Chapter 54-21.3
54-21.3-04. Exemptions.
1. The following statewide codes are exempt from this chapter: (a.) The Standards for Electrical Wiring and Equipment, as contained in North Dakota Administrative Code article 24-02. (b.) The State Plumbing Code, as contained in North Dakota Administrative Code article 62-03. (c.) The State Fire Code, as contained in the rules of the state fire marshal as provided in section 18-01-04.

2. The following buildings are exempt from this chapter: (a.) Buildings which are neither heated nor cooled. (b.) Buildings used whose peak design rate of energy usage is less than one watt per square foot [929.0304 square centimeters] or three and four-tenths British thermal units an hour per square foot [929.0304 square centimeters] of floor area. (c.) Restored or reconstructed buildings deliberately preserved beyond their normal term of use because of historical associations, architectural interests, or public policy, or buildings otherwise qualified as a pioneer building, historical site, state monument, or other similar designation pursuant to state or local law.

3. Any building used for agricultural purposes, unless a place of human habitation or for use by the public is exempt from this chapter. **Source:** S.L. 1979, ch. 548, § 4.

54-21.3-04.1. Accessibility standards.
Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision entities may not claim the exceptions to the requirement that elevators be installed in certain buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section 4.1.6(1)(k)(i) in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or political subdivision building or facility is not required if another method is effective in achieving compliance with regulations adopted under Public Law 101-336. For public accommodations, an alternative to a structural change in existing buildings or facilities is permitted only after it has been documented, in accordance with regulations adopted under Public Law 336, that a particular structural change is not readily achievable. A state agency or the governing body of a political subdivision shall require from any person preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in this section. A statement of conformance must be submitted to the office of intergovernmental assistance for recording. **Source:** S.L. 1993, ch. 5, § 20; 1993, ch. 261, § 4.

Rocky Mountain ADA
Technical Assistance Center
North Dakota, South Dakota, Montana, Wyoming, Utah, Colorado
1-800-949-4232
Over 43 million Americans with **physical** or **mental** impairments that **substantially limit** daily activities are protected under the ADA. These activities include working, walking, talking, seeing, hearing, or caring for one-self. People who have a record of such impairment and those regarded as having impairment are also protected.
The ADA has the following five titles:
Title I -Employment (all Title II employers and private employers with 15 or more employees)
Title II -Public Services (state and local government including public school districts and public transportation)
Title III -Public Accommodations and Services Operated by Private Entities
Title IV -Telecommunications
Title V -Miscellaneous Provisions
The following is a brief summary of some of the major requirements contained in the ADA statute. To determine all of the requirements that a covered entity must satisfy, it is necessary to refer to the regulations, guidelines, and/or technical assistance materials that have been developed by the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), the Department of Transportation (DOT), the Federal

Communications Commission (FCC), and the Architectural and Transportation Barriers Compliance Board (the Access Board). In addition, the Internal Revenue Service (IRS) has developed regulations on the tax relief available for certain costs of complying with the ADA, such as **small business tax credits.**

Title I – Employment
Title I of the ADA prohibits discrimination in employment against people with disabilities. It requires employers to make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee, unless such accommodation would impose an undue hardship on the employer. Reasonable accommodations include such actions as making worksites accessible, modifying existing equipment, providing new devices, modifying work schedules, restructuring jobs, and providing readers or interpreters.

Title I also prohibits the use of employment tests and other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless such tests or criteria are shown to be job-related and consistent with business necessity. It also bans the use of pre-employment medical examinations or inquiries to determine if an applicant has a disability. It does, however, permit the use of a medical examination after a job offer has been made if the results are kept confidential; all persons offered employment in the same job category are required to take them; and the results are not used to discriminate.

Employers are permitted, at any time, to inquire about the ability of a job applicant or employee to perform job-related functions. The EEOC is the enforcement agency for Title I.

Title II –Public Services Title II of the ADA requires that the services and programs of local and state governments, as well as other non-federal government agencies, shall operate their program so that **when viewed in their entirety** are readily accessible to and usable by individuals with disabilities.

Title II – entities Do not need to remove physical barriers, such as stairs, **in all existing buildings,** as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

Must provide appropriate auxiliary aids to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, unless an undue burden or fundamental alteration would result.

May impose safety requirements that are necessary for the safe operation of a Title II program if they are based on **actual risks** and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

In addition, Title II seeks to ensure that people with disabilities have access to existing public transportation services. All new buses must be accessible. Transit authorities must provide supplementary Para transit services or other special transportation services for individuals with disabilities who cannot use fixes-route bus services, unless this would present an undue burden.

Title III- Public Accommodation
Public accommodations include the broad range of privately-owned entities that affect commerce, including sales, rental and service establishments; private educational institutions; recreational facilities; and social service centers. In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, unless the requirements are “necessary” for the operation of the public accommodation. As an example, restricting people with Down ’s Syndrome to a certain area of a restaurant would violate Title III. It also requires public accommodations to make reasonable modifications to policies, practices, and procedures, unless those modifications would fundamentally alter the nature of the services provided by the public accommodation.

Title III also requires that public accommodations provide auxiliary aids necessary to enable persons who have visual, hearing, or sensory impairments to participate in the program, but only if there provision will not result in an undue burden on the business. Thus, for example, a restaurant would not be required to provide menus in Braille for blind patrons if it requires its wait person to read the menu. The auxiliary aid requirement is flexible. A public accommodation may choose among various alternatives as long as the result is effective communication.

With respect to existing facilities of public accommodations, physical barriers must be removed when it is "readily achievable" to do so (i.e when it can be accomplished easily and without much expense). Tax write-offs are available to minimize the costs associated with the removal of barriers in existing buildings or in providing auxiliary aids, including interpreters for the deaf. Modifications that would be readily achievable in most cases include the ramping of a few steps. However, all construction of new building facilities and alterations of existing facilities in public accommodations, as well as in commercial facilities such as office buildings, must comply with the ADA Accessibility Guidelines (ADAAG) so they are accessible to people with disabilities. New privately owned buildings are not required to install elevators if they are less than three stories high or have less than 3,000 square feet *per* story, *unless* the building is a shopping mall, or a professional office of a health care provider.

Title III also addresses transportation provided by private entities.

Title IV -Telecommunications
Title IV of the ADA amends the Communications Act of 1934 to require that telephone companies provide telecommunication relay services. The relay services must provide speech-impaired or hearing-impaired individuals who use TTYs or other non-voice terminal devices opportunities for communication that are equivalent to those provided to other customers.

Title V -Miscellaneous Provisions
This title addresses such issues as the ADA's relationship to other laws including the Rehabilitation Act of 1973, requirements relating to the provision of insurance, regulations by the Access Board, prohibition of State immunity, inclusion of Congress as a covered entity, implementation of each title, promotion of alternative means of dispute resolution and provision of technical assistance.

THE AMERICANS WITH DISABILITIES ACT
Introduction
Barriers to employment, transportation, public accommodations, public services, and telecommunications have imposed staggering economic and social costs on American society and have undermined our well-intentioned efforts to educate, rehabilitate, and employ individuals with disabilities. By breaking down these barriers, the Americans with Disabilities Act will enable society to benefit from the skills and talents of individuals with disabilities, will allow us all to gain from their increased purchasing power and ability to use it, and will lead to fuller, more productive lives for all Americans.

The Americans with Disabilities Act gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. Fair, swift, and effective enforcement of this landmark civil rights legislation is a high priority of the Federal Government. The following will provide answers to some of the most often asked questions about the new law.

QUESTIONS AND ANSWERS
Employment

Q. What employers are covered by title I of the ADA, and when is the coverage effective?
A. The title I employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees are covered as of July 26, 1992. Employers with 15 or more employees will be covered two years later, beginning July 26, 1994.

Q. What practices and activities are covered by the employment nondiscrimination requirements?
A. The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

Q. Who is protected from employment discrimination?
A. Employment discrimination is prohibited against "qualified individuals with disabilities." This includes applicants for employment and employees. An individual is considered to have a "disability" if she/he has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Persons discriminated against because they have a known association or relationships with an individual with a disability also are protected.

The first part of the definition makes clear that the ADA applies to persons who have impairments and that these must substantially limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, broken limb, or the flu, generally would not be covered.

The second part of the definition protecting individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness.

The third part of the definition protects individuals who are regarded as having a substantially limiting impairment, even though they may not have such an impairment. For example, this provision would protect a qualified individual with a severe facial disfigurement from being denied employment because an employer feared the "negative reactions" of customers or co-workers.

Q. Who is a "qualified individual with a disability"?
A. Qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that she/he holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual with a disability will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not conclusive evidence, of the essential functions of the job.

Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?
A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has no disability accurately types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. What limitations does the ADA impose on medical examinations and inquiries about disability?
A. An employer may not ask or require a job applicant to take a medical examination before making a job offer. It cannot make any pre-employment inquiry about a disability or the nature or severity of a disability. An employer may, however, ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how she/he would perform these functions.

An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category. A post-offer examination or inquiry does not have to be job-related and consistent with business necessity.

However, if an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reason(s) for not hiring must be job-related and consistent with business necessity. The employer also must show that no reasonable accommodation was available that would enable the individual to perform the essential job functions, or that accommodation would impose an undue hardship. A post-offer medical examination may disqualify an individual if the employer can demonstrate that the individual would pose a "direct threat" in the workplace (i.e., a significant risk of substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the "direct threat" level through reasonable accommodation. Such a disqualification is job-related and consistent with business necessity. A post-offer medical examination may not disqualify an individual with a disability who is currently able to perform essential job functions because of speculation that the disability may cause a risk of future injury.

After a person starts work, a medical examination or inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, examinations required by other Federal laws, examinations to determine current "fitness" to perform a particular job, and voluntary examinations that are part of employee health programs.

Information from all medical examinations and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.

Tests for illegal use of drugs are not medical examinations under the ADA and are not subject to the restrictions of such examinations.

Q. When can an employer ask an applicant to "self-identify" as having a disability?
A. Federal contractors and subcontractors who are covered by the affirmative action requirements of section 503 of the Rehabilitation Act of 1973 may invite individuals with disabilities to identify themselves on a job application form or by other pre-employment inquiry, to satisfy the section 503 affirmative action requirements. Employers who request such information must observe section 503 requirements regarding the manner in which such information is requested and used, and the procedures for maintaining such information as a separate, confidential record, apart from regular personnel records.

A pre-employment inquiry about a disability is allowed if required by another Federal law or regulation such as those applicable to disabled veterans and veterans of the Vietnam era. Pre-employment inquiries about disabilities may be necessary under such laws to identify applicants or clients with disabilities in order to provide them with required special services.

Q. Does the ADA require employers to develop written job descriptions?
A. No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function.

Q. What is "reasonable accommodation"?
A. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

Q. What are some of the accommodations applicants and employees may need?
A. Examples of reasonable accommodation include making existing facilities used by employees readily accessible

to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person is unable to do the original job because of a disability even with an accommodation. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will provide an opportunity for a person with a disability to achieve the same level of performance and to enjoy benefits equal to those of an average, similarly situated person without a disability. However, the accommodation does not have to ensure equal results or provide exactly the same benefits.

Q. When is an employer required to make a reasonable accommodation?
A. An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an accommodation, the employer is not
obligated to provide one except where an individual's known disability impairs his/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer. If a person with a disability requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

Q. What are the limitations on the obligation to make a reasonable accommodation?
A. The individual with a disability requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-case basis. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.

If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship. Also, if the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying that portion of the cost which would constitute an undue hardship or providing the accommodation.

Q. Must an employer modify existing facilities to make them accessible?
A. The employer's obligation under title I is to provide access for an individual applicant to participate in the job application process, and for an individual employee with a disability to perform the essential functions of his/her job, including access to a building, to the work site, to needed equipment, and to all facilities used by employees. For example, if an employee lounge is located in a place inaccessible to an employee using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers. The employer must provide such access unless it would cause an undue hardship.

Under title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's work needs. However, employers should consider initiating changes that will provide general accessibility, particularly for job applicants, since it is likely that people with disabilities will be applying for jobs. The employer does not have to make changes to provide access in places or facilities that will not be used by that individual for employment-related activities or benefits.

Q. Can an employer be required to reallocate an essential function of a job to another employee as a reasonable accommodation?
A. No. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.

Q. Can an employer be required to modify, adjust, or make other reasonable accommodations in the way a test is given to a qualified applicant or employee with a disability?
A. Yes. Accommodations may be needed to assure that tests or examinations measure the actual ability of an individual to perform job functions rather than reflect limitations caused by the disability. Tests should be given to people who have sensory, speaking, or manual impairments in a format that does not require the use of the impaired skill, unless it is a job-related skill that the test is designed to measure.

Q. Can an employer maintain existing production/performance standards for an employee with a disability?
A. An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions, with or without reasonable accommodation. An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal functions unless the disability affects the person's ability to perform those marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring but may not exclude an individual with a disability who is satisfactorily performing a job's essential functions.

Q. Can an employer establish specific attendance and leave policies?
A. An employer can establish attendance and leave policies that are uniformly applied to all employees, regardless of disability, but may not refuse leave needed by an employee with a disability if other employees get such leave. An employer also may be required to make adjustments in leave policy as a reasonable accommodation. The employer is not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave.

A uniformly applied leave policy does not violate the ADA because it has a more severe effect on an individual because of his/her disability. However, if an individual with a disability requests a modification of such a policy as a reasonable accommodation, an employer may be required to provide it, unless it would impose an undue hardship.

Q. Can an employer consider health and safety when deciding whether to hire an applicant or retain an employee with a disability?
A. Yes. The ADA permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk of substantial harm—to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is significant risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Q. Are applicants or employees who are currently illegally using drugs covered by the ADA?

A. No. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when the employer takes action on the basis of their drug use.

Q. Is testing for the illegal use of drugs permissible under the ADA?
A. Yes. A test for the illegal use of drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

If the results of a drug test reveal the presence of a lawfully prescribed drug or other medical information, such information must be treated as a confidential medical record.

Q. Are alcoholics covered by the ADA?
A. Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

Q. Does the ADA override Federal and State health and safety laws?
A. The ADA does not override health and safety requirements established under other Federal laws even if a standard adversely affects the employment of an individual with a disability. If a standard is required by another Federal law, an employer must comply with it and does not have to show that the standard is job related and consistent with business necessity. For example, employers must conform to health and safety requirements of the U.S. Occupational Safety and Health Administration. However, an employer still has the obligation under the ADA to consider whether there is a reasonable accommodation, consistent with the standards of other Federal laws that will prevent exclusion of qualified individuals with disabilities who can perform jobs without violating the standards of those laws. If an employer can comply with both the ADA and another Federal law, then the employer must do so.

The ADA does not override State or local laws designed to protect public health and safety, except where such laws conflict with the ADA requirements. If there is a State or local law that would exclude an individual with a disability from a particular job or profession because of a health or safety risk, the employer still must assess whether a particular individual would pose a "direct threat" to health or safety under the ADA standard. If such a "direct threat" exists, the employer must consider whether it could be eliminated or reduced below the level of a "direct threat" by reasonable accommodation. An employer cannot rely on a State or local law that conflicts with ADA requirements as a defense to a charge of discrimination.

Q. How does the ADA affect workers compensation programs?
A. Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause temporary impairments which heal within a short period of time with little or no long-term or permanent impact. Therefore, many injured workers who qualify for benefits under workers' compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA.

An employer may not inquire into an applicant's workers' compensation history before making a conditional offer of employment. After making a conditional job offer, an employer may inquire about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category. However, even after a conditional offer has been made, an employer cannot require a potential employee to have a medical examination because a response to a medical inquiry (as opposed to results from a medical examination) shows a previous on-the-job injury unless all applicants in the same job category are required to have an examination. Also, an employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation.

An employer may refuse to hire or may fire a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or worker's compensation history.

An employer also may submit medical information and records concerning employees and applicants (obtained after a conditional job offer) to state workers' compensation offices and "second injury" funds without violating ADA confidentiality requirements.

Q. What is discrimination based on "relationship or association" under the ADA?
A. The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person whose spouse has a disability from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

Q. How are the employment provisions enforced?
A. The employment provisions of the ADA are enforced under the same procedures now applicable to race, color, sex, national origin, and religious discrimination under title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1991. Complaints regarding actions that occurred on or after July 26, 1992, may be filed with the Equal Employment Opportunity Commission or designated State human rights agencies. Available remedies will include hiring, reinstatement, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorneys' fees, expert witness fees, and court costs. Compensatory and punitive damages also may be available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation.

Q. What financial assistance is available to employers to help them make reasonable accommodations and comply with the ADA?
A. A special tax credit is available to help smaller employers make accommodations required by the ADA. An eligible small business may take a tax credit of up to $5,000 per year for accommodations made to comply with the ADA. The credit is available for one-half the cost of "eligible access expenditures" that are more than $250 but less than $10,250.

A full tax deduction, up to $15,000 per year, also is available to any business for expenses of removing qualified architectural or transportation barriers. Expenses covered include costs of removing barriers created by steps, narrow doors, inaccessible parking spaces, restroom facilities, and transportation vehicles. Information about the tax credit and the tax deduction can be obtained from a local IRS office, or by contacting the Office of Chief Counsel, Internal Revenue Service.

Tax credits are available under the Targeted Jobs Tax Credit Program (TJTCP) for employers who hire individuals with disabilities referred by State or local vocational rehabilitation agencies, State Commissions on the Blind, or the U.S. Department of Veterans Affairs, and certified by a State Employment Service. Under the TJTCP, a tax credit may be taken for up to 40 percent of the first $6,000 of first-year wages of a new employee with a disability. This program must be reauthorized each year by Congress, and currently is extended through June 30, 1993. Further information about the TJTCP can be obtained from the State Employment Services or from State Governors' Committees on the Employment of People with Disabilities.

Q. What are an employer's recordkeeping requirements under the employment provisions of the ADA?
A. An employer must maintain records such as application forms submitted by applicants and other records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship for one year after making the record or taking the action described (whichever occurs later). If a charge of discrimination is filed or an action is brought by EEOC, an employer must save all personnel records related to the charge until final disposition of the charge.

Q. Does the ADA require that an employer post a notice explaining its requirements?
A. The ADA requires that employers post a notice describing the provisions of the ADA. It must be made accessible, as needed, to individuals with disabilities. A poster is available from EEOC summarizing the requirements of the ADA and other Federal legal requirements for nondiscrimination for which EEOC has enforcement responsibility. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

Q. What resources does the Equal Employment Opportunity Commission have available to help employers and people with disabilities understand and comply with the employment requirements of the ADA?
A. The Equal Employment Opportunity Commission has developed several resources to help employers and people with disabilities understand and comply with the employment provisions of the ADA. Resources include:
-- A Technical Assistance Manual that provides "how-to" guidance on the employment provisions of the ADA as well as a resource directory to help individuals find specific information.
-- A variety of brochures, booklets, and fact sheets.

State and Local Governments

Q. Does the ADA apply to State and local governments?
A. Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities**. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State or local governments.** It clarifies the requirements of section 504 of the Rehabilitation Act of 1973 for public transportation systems that receive Federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (AMTRAK).

Q. When do the requirements for State and local governments become effective?
A. In general, they became effective on January 26, 1992.

Q. How does title II affect participation in a State or local government's programs, activities, and services?
A. A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. The State or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a

particular modification would fundamentally alter the nature of its service, program, or activity, it is not required to make that modification.

Q. Does title II cover a public entity's employment policies and practices?
A. Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities. In addition to title II's employment coverage, title I of the ADA and section 504 of the Rehabilitation Act of 1973 prohibit employment discrimination against qualified individuals with disabilities by certain public entities.

Q. What changes must a public entity make to its existing facilities to make them accessible?
A. A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

Q. When must structural changes be made to attain program accessibility?
A. Structural changes needed for program accessibility must be made as expeditiously as possible, but no later than January 26, 1995. This three-year time period is not a grace period; all alterations must be accomplished as expeditiously as possible. A public entity that employs 50 or more persons must have developed a transition plan by July 26, 1992, setting forth the steps necessary to complete such changes.

Q. What is a self-evaluation?
A. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with title II's requirements. All public entities must complete a self-evaluation by January 26, 1993. A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations, but are encouraged to do so because these documents evidence a public entity's good faith efforts to comply with title II's requirements.

Q. What does title II require for new construction and alterations?
A. The ADA requires that all new buildings constructed by a State or local government be accessible. In addition, when a State or local government undertakes alterations to a building, it must make the altered portions accessible.

Q. How will a State or local government know that a new building is accessible?
A. A State or local government will be in compliance with the ADA for new construction and alterations if it follows either of two accessibility standards. It can choose either the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, which is the standard that must be used for public accommodations and commercial facilities under title III of the ADA. If the State or local government chooses the ADA Accessibility Guidelines, it is not entitled to the elevator exemption (which permits certain private buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

Q. What requirements apply to a public entity's emergency telephone services, such as 911?
A. State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access. Where a public entity provides 911 telephone service, it may not substitute a separate seven-digit telephone line as the sole means for access to 911

services by nonvoice users. A public entity may, however, provide a separate seven-digit line for the exclusive use of nonvoice callers in addition to providing direct access for such calls to its 911 line.

Q. Does title II require that telephone emergency service systems be compatible with all formats used for nonvoice communications?
A. No. At present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a public entity would not be required to provide direct access to computer modems using formats other than Baudot.

Q. How will the ADA's requirements for <u>State and local governments</u> be enforced?
A. Private individuals may bring lawsuits to enforce their rights under title II and may receive the same remedies as those provided under section 504 of the Rehabilitation Act of 1973, including reasonable attorney's fees. Individuals may also file complaints with eight designated Federal agencies, including the Department of Justice and the Department of Transportation.

Public Accommodations

Q. What are public accommodations?
A. A public accommodation is a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private clubs and religious organizations are exempt from the ADA's title III requirements for public accommodations.

Q. Will the ADA have any effect on the eligibility criteria used by public accommodations to determine who may receive services?
A. Yes. If a criterion screens out or tends to screen out individuals with disabilities, it may only be used if necessary for the provision of the services. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering the premises, or for a movie theater to exclude all individuals with cerebral palsy. More subtle forms of discrimination are also prohibited. For example, requiring presentation of a driver's license as the sole acceptable means of identification for purposes of paying by check could constitute discrimination against individuals with vision impairments. This would be true if such individuals are ineligible to receive licenses and the use of an alternative means of identification is feasible.

Q. Does the ADA allow public accommodations to take safety factors into consideration in providing services to individuals with disabilities?
A. The ADA expressly provides that a public accommodation may exclude an individual, if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures, or by the provision of auxiliary aids. A public accommodation will be permitted to establish objective safety criteria for the operation of its business; however, any safety standard must be based on objective requirements rather than stereotypes or generalizations about the ability of persons with disabilities to participate in an activity.

Q. Are there any limits on the kinds of modifications in policies, practices, and procedures required by the ADA?
A. Yes. The ADA does not require modifications that would fundamentally alter the nature of the services provided by the public accommodation. For example, it would not be discriminatory for a physician specialist who treats only burn patients to refer a deaf individual to another physician for treatment of a broken limb or respiratory ailment. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice.

Q. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments?
A. Appropriate auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing impairments; and qualified readers, taped texts, and brailed or large print materials for individuals with vision impairments**.**

Q. Are there any limitations on the ADA's auxiliary aids requirements?
A. Yes. The ADA does not require the provision of any auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a public accommodation. However, the public accommodation is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and case law under section 504 of the Rehabilitation Act and are to be determined on a case-by-case basis.

Q. What does the term "readily achievable" mean?
A. It means "easily accomplishable and able to be carried out without much difficulty or expense."

Q. What are examples of the types of modifications that would be readily achievable in most cases?
A. Examples include the simple ramping of a few steps, the installation of grab bars where only routine reinforcement of the wall is required, the lowering of telephones, and similar modest adjustments.

Q. Will businesses need to rearrange furniture and display racks?
A. Possibly. For example, restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit access to wheelchair users.

Q. Will businesses need to install elevators?
A. Businesses are not required to retrofit their facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.

Q. When barrier removal is not readily achievable, what kinds of alternative steps are required by the ADA?
A. Alternatives may include such measures as in-store assistance for removing articles from inaccessible shelves, home delivery of groceries, or coming to the door to receive or return dry cleaning.

Q. Must alternative steps be taken without regard to cost?
A. No, only readily achievable alternative steps must be undertaken.

Q. How is "readily achievable" determined in a multisite business?
A. In determining whether an action to make a public accommodation accessible would be "readily achievable," the overall size of the Parent Corporation or entity is only one factor to be considered. The ADA also permits consideration of the financial resources of the particular facility or facilities involved and the administrative or fiscal relationship of the facility or facilities to the parent entity.

Q. Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?
A. The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible.

Q. What does the ADA require in new construction?
A. The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the

professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Is it expensive to make all newly constructed places of public accommodation and commercial facilities accessible?
A. The cost of incorporating accessibility features in new construction is less than one percent of construction costs. This is a small price in relation to the economic benefits to be derived from full accessibility in the future, such as increased employment and consumer spending and decreased welfare dependency.

Q. Must every feature of a new facility be accessible?
A. No, only a specified number of elements such as parking spaces and drinking fountains must be made accessible in order for a facility to be "readily accessible." Certain nonoccupiable spaces such as elevator pits, elevator penthouses, and piping or equipment catwalks need not be accessible.

Q. What are the ADA requirements for altering facilities?
A. All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided.

The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20% of the cost of the original alteration. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

Q. Does the ADA permit an individual with a disability to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?
A. The ADA public accommodations provisions permit an individual to allege discrimination based on a reasonable belief that discrimination is about to occur. This provision, for example, allows a person who uses a wheelchair to challenge the planned construction of a new place of public accommodation, such as a shopping mall, that would not be accessible to individuals who use wheelchairs. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive.

Q. How does the ADA affect existing State and local building codes?
A. Existing codes remain in effect. The ADA allows the Attorney General to certify that a State law, local building code, or similar ordinance that establishes accessibility requirements meets or exceeds the minimum accessibility requirements for public accommodations and commercial facilities. Any State or local government may apply for certification of its code or ordinance. The Attorney General can certify a code or ordinance only after prior notice and a public hearing at which interested people, including individuals with disabilities, are provided an opportunity to testify against the certification.

Q. What is the effect of certification of a State or local code or ordinance?
A. Certification can be advantageous if an entity has constructed or altered a facility according to a certified code or ordinance. If someone later brings an enforcement proceeding against the entity, the certification is considered "rebuttable evidence" that the State law or local ordinance meets or exceeds the minimum requirements of the ADA. In other words, the entity can argue that the construction or alteration met the requirements of the ADA because it was done in compliance with the State or local code that had been certified.

Q. When are the public accommodations provisions effective?
A. In general, they became effective on January 26, 1992.

Q. How will the public accommodations provisions be enforced?
A. Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In these cases, the Attorney General may seek monetary damages and civil penalties. Civil penalties may not exceed $50,000 for a first violation or $100,000 for any subsequent violation.

Miscellaneous

Q. What are the ASA's requirements for public transit buses?
A. The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new fixed-route, public transit buses be accessible and that supplementary par transit services be provided for those individuals with disabilities who cannot use fixed-route bus service. Information on how to contact the Department of Transportation follows.

Q. How will the ADA make telecommunications accessible?
A. The ADA requires the establishment of telephone relay services for individuals who use telecommunications devices for deaf persons (TDD's) or similar devices. The Federal Communications Commission has issued regulations specifying standards for the operation of these services.

Q. Are businesses entitled to any tax benefit to help pay for the cost of compliance?
A. As amended in 1990, the Internal Revenue Code allows a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers.

The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

Telephone Numbers for ADA Information

This list contains the telephone numbers of Federal agencies that are responsible for providing information to the public about the Americans with Disabilities Act and organizations that have been funded by the Federal government to provide information through staffed information centers.

The agencies and organizations listed are sources for obtaining information about the law's requirements and informal guidance in understanding and complying with the ADA. They are not, and should not be viewed as, sources for obtaining legal advice or legal opinions about your rights or responsibilities under the ADA.

Architectural and Transportation Barriers Compliance Board 1-800-872-2253 (voice & TDD); Equal Employment Opportunity Commission; For questions and documents 1-800-669-3362 (voice) 1-800-800-3302 (TDD) ; Alternate number for ordering documents (print and other formats) 202/663-4264 (voice) 202/663-7110 (TDD) Federal Communications Commission - For ADA documents and general information - 202/632-7260 (voice); 202/632-6999 (TDD. Job Accommodation Network -1-800-526-7234 (voice) 1-800-526-7234 (TDD). President's Committee on Employment of People with Disabilities Information Line: ADA Work 1-800-232-9675 (voice & TDD). U.S. Department of Justice - 202/514-0301 (voice) 202/514-0383 (TDD)

U.S. Department of Transportation Federal Transit Administration (for ADA documents and information)- 202/366-1656 (voice) 202/366-2979 (TDD).Office of the General Counsel (for legal questions) - 202/366-9306 (voice)- 202/755-7687 (TDD). Federal Aviation Administration-202/376-6406 (voice)

Rural Transit Assistance Program for information and assistance on public transportation issues) 1-800-527-8279 (voice & TDD) Regional Disability and Business Technical Assistance Centers

ADA information, assistance, and copies of ADA documents supplied by the Equal Employment Opportunity Commission and the Department of Justice, which are available in standard print, large print, audio cassette, Braille, and computer disk, may be obtained by calling the following toll free number to reach any Assistance Center: **1-800-949-4232 (voice & TDD).** Region VIII (North Dakota, South Dakota, Montana, Wyoming, Colorado, Utah) Assistance Center: **719-444-0252 (voice & TDD)**

Addresses for ADA Information

Architectural and Transportation Barriers
Compliance Board
1331 F Street NW, Suite 1000
Washington, DC 20004-1111

Federal Communications Commission
1919 M Street NW, Suite 1000
Washington, DC 20554

US Equal Employment Opportunity Commission
1801 L Street NW
Washington, DC 20507

US Department of Justice
Civil Rights Division
Public Access Section
PO Box 66738
Washington, DS 20035-6738

US Department of Transportation
400 Seventh Street SW
Washington, DC 20590