

# North Dakota State University

## Policy Manual

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### SECTION 713.1 LITIGATION HOLD

SOURCE: NDSU President  
ND Office of Risk Management

Documents and information related to pending or reasonably foreseeable litigation may not be deleted or destroyed. Once a litigation hold is in place, the documents and information must be kept until the litigation hold has been removed; upon removal, the retention and destruction of documents and information will be in compliance with NDSU Policy 713, Records Management.

#### I. Definitions

Litigation Hold	A written directive to preserve documents and information for pending or reasonably foreseeable litigation. Litigation is reasonably foreseeable upon receipt of a summons or complaint, the filing of an Equal Employment Opportunity Commission (EEOC) charge, the filing of a complaint with the North Dakota Department of Labor, formal notice of investigation, receipt of a subpoena, receipt of a Notice of Claim filed with the North Dakota Office of Management and Budget, verbal communication of the intent to sue, or any other communication which would lead a reasonable person to believe that litigation was a credible probability.
Public Employee N.D.C.C. 44-04-17.1	Includes any individual who has applied for employment, is employed, or has been employed by a public entity.
Employee N.D.C.C. 54-06-01	Includes all persons whose office or employment is held by virtue of any appointment or employment however made, other than an election by the voters of the state, whether or not such office or employment is created by an act of the legislative assembly.

#### II. Imposition of Sanctions

Failure to follow and comply with this policy is subject to sanctions that can include, but is not limited to, a formal notice placed in the employee's personnel file up to termination of employment.

#### III. Section 713.1 LITIGATION HOLD PROCEDURE

- A. When an employee is made aware of a threat of litigation or when an employee believes that litigation is reasonably foreseeable, the employee will immediately inform his/her supervisor who will contact the director of records management. The Director of Records Management will contact the attorney assigned to NDSU. The attorney assigned to NDSU will determine if the situation warrants a Litigation Hold.

- B. If litigation has been commenced, the attorney assigned to NDSU will issue a Litigation Hold. Once a Litigation Hold has been issued, documents and information pertaining to the litigation or potential litigation shall not be deleted or destroyed.
- C. A Litigation Hold will:
1. Identify the employees who are likely to have documents and information relevant to the litigation or potential litigation;
  2. Be communicated in writing to the identified employees in a comprehensible and timely manner;
  3. Clearly define what information is to be preserved and how the preservation will be undertaken; and
  4. Be reviewed periodically and, if necessary, be reissued or amended.
- D. Employees who receive a Litigation Hold will:
1. Immediately suspend the deletion or destruction of documents and information relevant to the litigation, including any automated processes that may affect the deletion or destruction of documents and information;
  2. Preserve existing records relevant to the litigation or potential litigation;
  3. Preserve new records that pertain to the litigation or potential litigation; and
  4. Provide any additional assistance that may be required to preserve the relevant documents and information.
- E. If an employee subject to a Litigation Hold separates employment from NDSU, the employee's supervisor will take possession of and retain the documents and information subject to the Litigation Hold and notify the Director of Records Management of the change in custody of the documents and information.
- F. When the litigation has ended or is no longer foreseeable, the attorney assigned to NDSU will remove the Litigation Hold. Upon removal of the Litigation Hold, the retention and destruction of documents and information will be in compliance with NDSU Policy 713: Records Management.
- G. Records subject to a Litigation Hold include, but are not limited to:
- Paper originals, drafts and copies
  - Electronic records
  - Email and email attachments
  - Calendars and planners
  - Instant messages
  - Network, computer and application logs
  - Slide presentations
  - Manuals, publications, bulletins and pamphlets
  - Graphic files and electronic images
  - Voicemail
  - Website information, pages, etc.
  - Text messages
  - Video files
  - Audio files

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HISTORY:

New	January 27, 2011
Housekeeping	August 31, 2015
Amended	April 28, 2016