

LABOR AND EMPLOYMENT

CHAPTER 291

HOUSE BILL NO. 1468 (Representatives Mahoney, Murphy)

EMPLOYER RETALIATION PROHIBITED

AN ACT to amend and reenact section 34-01-20 of the North Dakota Century Code, relating to prohibiting employer retaliation against employees for certain conduct.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-01-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-01-20. Prohibited action - Report of complaint to commissioner of labor
Employer retaliation prohibited - Civil action for relief - Penalty.**

1. An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
 - a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal or state law or rule to an employer or to a governmental body or law enforcement official.
 - b. The employee is requested by a public body or official to participate in an investigation, hearing, or inquiry.
 - c. The employee refuses an employer's order to perform an action that the employee believes violates state or federal law or rule or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.
2. ~~The employee may seek the assistance of the commissioner of labor, who may use the authority of chapters 34-06 and 34-14 to investigate, hold hearings, and otherwise assure compliance with this section.~~
3. An employer who willfully violates this section is guilty of an infraction.
3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within ninety days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later. If the

court determines that a violation has or is occurring under this section, the court may order, as the court deems appropriate, reinstatement of the employee, back pay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce back pay otherwise allowable. In any action under this section, the court may award reasonable attorneys' fees to the prevailing party as part of the costs of litigation. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor may receive complaints of violations of this section and attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

Approved April 4, 1997
Filed April 4, 1997

CHAPTER 292

HOUSE BILL NO. 1193

(Representatives Skarphol, Wald, Price)
(Senator Andrist)

EMPLOYER REFERENCE IMMUNITY

AN ACT to create and enact a new section to chapter 34-02 of the North Dakota Century Code, relating to references by employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-02 of the North Dakota Century Code is created and enacted as follows:

Immunity for providing employment reference.

1. An employer, or an employer's agent, who truthfully discloses date of employment, pay level, job description and duties, and wage history about a current or former employee to a prospective employer of the employee is immune from civil liability for the disclosure and the consequences of the disclosure of that information.
2. An employer, or an employer's agent, who discloses information about a current or former employee's job performance to a prospective employer of the employee is presumed to be acting in good faith. Unless lack of good faith is shown, the employer or employer's agent is immune from civil liability for the disclosure and the consequences of providing that information. The presumption of good faith may be rebutted by a preponderance of the evidence that the information disclosed was:
 - a. Knowingly false;
 - b. Disclosed with reckless disregard for the truth;
 - c. Deliberately misleading; or
 - d. Rendered with malicious purpose.
3. The immunity provided by subsection 2 does not apply if the information provided is in violation of a nondisclosure agreement, or was otherwise confidential according to applicable law.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 293

HOUSE BILL NO. 1100 (Representative Keiser)

LABOR COMMISSIONER EMPLOYER RECORD CONFIDENTIALITY

AN ACT to amend and reenact sections 14-02.4-21 and 34-05-03 of the North Dakota Century Code, relating to records and information furnished to the labor commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals - Records exempt. The department of labor may receive complaints of discriminating employment practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter. A complaint received and information obtained during any investigation conducted under this section are exempt from section 44-04-18 before the institution of any judicial proceedings under this chapter. The commissioner may disclose to the complainant or the respondent, or attorneys for the complainant or respondent, information obtained under this section if deemed necessary by the commissioner for securing an appropriate resolution of a complaint. Any record or information held by the department of labor pursuant to an agreement with any federal agency for the enforcement of fair employment practices is exempt from section 44-04-18, and the department of labor may disclose to federal officials information obtained under this section if appropriate to carry out the enforcement of fair employment practices pursuant to the agreement. The department of labor may not disclose anything said or done as part of the informal negotiation or conciliation efforts under this section.

SECTION 2. AMENDMENT. Section 34-05-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-03. Officials and employers to furnish certain information - Records - Penalty. All public officers and all employers shall furnish to the commissioner of labor such information as the commissioner may request relating to their respective offices or businesses. The information obtained must be preserved, systemized, and tabulated by the commissioner. Information concerning the business or affairs of any person may not be divulged or made public by the commissioner or anyone in the employ of the commissioner's office; provided, that the Any information collected, records, and determinations made under chapter 34-14, information collected under this section from private employers, and information collected under section 34-06-02 from private employers are exempt from section 44-04-18. The

commissioner shall disclose information collected, records, and determinations made to the parties to an investigation under chapter 34-14. When the commissioner enforces collection of a wage claim by judicial action or forwards records, information, or determinations to another state or country for enforcement as authorized under chapter 34-14, the information collected, records, and determinations made under chapter 34-14 are open records. The commissioner may publish aggregate employment-related statistics. The commissioner may provide a list of the names and addresses of employers to other agencies or to a private entity for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any officer, ~~any~~ employer, ~~and any~~ or operator or manager of any establishment wherein persons are employed, who fails or refuses to furnish the commissioner with the information requested under the provisions of this section, is guilty of a class B misdemeanor. ~~No prosecution may be commenced for a violation of the provisions of this section relating to the furnishing of information until a second blank has been mailed to the defaulting officer or employer and that person has been given twenty days to complete and return the same.~~

Approved April 8, 1997

Filed April 8, 1997

CHAPTER 294**SENATE BILL NO. 2205**
(Senators Grindberg, Krauter)**WAGE AND HOUR SUMMARY MAILING**

AN ACT to amend and reenact section 34-06-12 of the North Dakota Century Code, relating to wage, hour, and conditions of labor orders issued by the commissioner of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-12. Order issued by commissioner - ~~Effective date~~ - Posting. After the hearing provided for in section 34-06-11 has been held, the commissioner may make and render ~~such any~~ order as may be necessary and proper to adopt ~~such the~~ recommendations and to carry the same recommendations into effect, and to require all employers in the occupation affected thereby to observe and comply with ~~such the~~ recommendations and order. ~~The order made by the commissioner becomes effective on the sixtieth day following its rendition. After the order has become effective, no~~ An employer may not violate or disregard the terms or provisions thereof or employ any employee in any occupation covered thereby for longer hours or under different conditions or at a lower wage scale than are authorized therein. ~~All effective orders must be reviewed annually of the order. A copy~~ The commissioner shall mail a summary of such the order must be mailed by the commissioner to every employer affected thereby, and each such by the order. The employer shall keep a copy of the order posted in a conspicuous place in a commonly frequented area of the employer's establishment in which employees work.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 295**HOUSE BILL NO. 1197**

(Representatives Poolman, R. Kelsch)
(Senators Grindberg, B. Stenehjem)

MINIMUM WAGE SPECIAL LICENSE EXEMPTION

AN ACT to amend and reenact section 34-06-15 of the North Dakota Century Code, relating to issuing special licenses to employ at less than minimum wage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-15. Special license to employ at less than minimum wage. The commissioner may issue to an employee whose productive capacity for the work to be performed is impaired by physical or mental disability, or to any ~~apprentice student~~ or learner enrolled in an occupation that usually requires learners or apprentices a vocational education or related program, a special license authorizing the employment of that licensee ~~in an occupation in which a minimum wage has been established~~, at a wage less than the minimum wage ~~for that occupation~~. The commissioner may also issue special licenses to community rehabilitation programs for the handicapped which engage in the occupation and responsibility of representing and placing for the purpose of training, learning, or employment of those employees whose productive capacity for the work to be performed is impaired by physical or mental disability. The commissioner shall issue ~~the license~~ such licenses under rules adopted by the commissioner.

Approved March 23, 1997

Filed March 24, 1997

CHAPTER 296**SENATE BILL NO. 2162**

(Senator Holmberg)

EQUAL PAY LAW POSTING REPEALED

AN ACT to repeal section 34-06.1-08 of the North Dakota Century Code, relating to posting of copies of the equal pay law by the commissioner of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 34-06.1-08 of the North Dakota Century Code is repealed.

Approved March 5, 1997

Filed March 6, 1997

CHAPTER 297

SENATE BILL NO. 2317

(Senator Naaden)
(Representative Boehm)

SCHOOL-TO-WORK PROGRAM EXEMPTIONS

AN ACT to amend and reenact sections 34-07-02 and 34-07-15 of the North Dakota Century Code, relating to school-to-work program exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-07-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-02. Certificate of employment required - Inspection - List of minors employed to be kept. No minor fourteen or fifteen years of age may be employed or permitted to work in any occupation except a ~~school-to-work transition program approved by the commissioner of labor at the request of the North Dakota school-to-work transition team,~~ farm labor, domestic service, or in the employment of, and under the direct supervision of, the minor's parent or guardian unless the minor has graduated from high school or is exempt from compulsory school attendance or, unless the minor has an employment certificate signed by the minor's parent or guardian in accordance with the provisions of this chapter. Any person, firm, corporation, or limited liability company employing a minor must keep on file a completed employment certificate, for each minor, as provided in this chapter. The employment certificate must be accessible to inspection by the principal of the school which the minor attends, a principal in the municipality in which the minor resides, or the commissioner of labor or the commissioner's agent or representative.

SECTION 2. AMENDMENT. Section 34-07-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age - Notice to be posted. No minor fourteen or fifteen years of age may be employed or permitted to work at any occupation, except in a ~~school-to-work transition program approved by the commissioner of labor at the request of the North Dakota school-to-work transition team,~~ domestic services and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that ~~such~~ these hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek 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. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school because they are excepted from compulsory school attendance by the provisions of chapter 15-34.1. Every employer shall post in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours

allowed for dinner or other meals. The printed form of ~~such~~the notice must be furnished by the commissioner of labor. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 298

HOUSE BILL NO. 1175

(Representatives Clark, R. Kelsch, Mickelson)

EMPLOYMENT CERTIFICATE CONTENTS

AN ACT to amend and reenact section 34-07-12 of the North Dakota Century Code, relating to the contents of employment certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-07-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-12. Contents of employment certificate. The employment certificate must state the date and place of birth of the minor, ~~the color of the minor's hair and eyes, the minor's height and weight, any distinguishing facial marks of such minor,~~ a description of the job duties and responsibilities of the minor, and must also be signed by the minor's parent or guardian and the employer.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 299

SENATE BILL NO. 2143

(Senators Klein, Fischer, Thane)
(Representatives R. Kelsch, Stenehjem)

EMPLOYMENT AGENCY LICENSES AND REFUNDS

AN ACT to amend and reenact sections 34-13-01, 34-13-02, and subsection 1 of section 34-13-13.1 of the North Dakota Century Code, relating to employment agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-13-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-13-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of labor.
2. "Employee" means any person, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the medium of service of an employment agent.
3. "Employer" means any person, firm, corporation, limited liability company, or association employing or seeking to enter into an arrangement to employ any person through the medium or service of an employment agent.
4. "Employment agent" or "employment agency" means any person, firm, corporation, limited liability company, or association in this state engaged for hire or compensation in the business of furnishing:
 - a. Persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or
 - b. Any other person, firm, corporation, limited liability company, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, limited liability company, or association to procure such help.

The term "employment agent" or "employment agency" does not include any person, firm, corporation, limited liability company, or association employing individuals to render part-time or temporary services to or for a third person, if the person, firm, corporation, limited liability company, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides workers' compensation coverage, and is responsible for the acts of the employees while rendering services to or for a third person.

5. "Gross misconduct" means misconduct involving assault and battery, the malicious destruction of property, or the theft of money or property.

SECTION 2. AMENDMENT. Section 34-13-02 of the North Dakota Century Code is amended and reenacted as follows:

34-13-02. License required - Penalty. ~~No~~ A person may not open or carry on an employment agency in if that person has a physical presence or location within the state, unless such that person first procures a license from the commissioner. ~~Any~~ A person opening or conducting any such agency without first procuring a license is guilty of a class B misdemeanor.

SECTION 3. AMENDMENT. Subsection 1 of section 34-13-13.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If an employment position terminates or the employee is fired or laid off before the end of ninety calendar days, the employee shall receive a refund of all service charges paid in excess of twenty percent of the gross wages actually received prior to termination or release. If the employee has a signed contract accepting an employment position but does not start employment, quits the job voluntarily, or is terminated for gross misconduct, the refund does not apply. Nothing contained in this section restricts an agency from receiving full-service charges at the time of the referral, subject to the refund herein provided.

Approved March 13, 1997

Filed March 13, 1997

CHAPTER 300**HOUSE BILL NO. 1466**
(Representatives Mahoney, Berg)**LABOR COMMISSIONER WAGE CLAIM
ENFORCEMENT**

AN ACT to amend and reenact sections 34-14-05 and 34-14-09 of the North Dakota Century Code, relating to investigation and enforcement of wage claims by the labor commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-05 of the North Dakota Century Code is amended and reenacted as follows:

34-14-05. Enforcement. It is the duty of the commissioner of labor or ~~his~~ the commissioner's deputy to ensure compliance with the provisions of this chapter, to investigate as to any violations of this chapter, and to institute or cause to be instituted actions for penalties and forfeitures provided hereunder. The commissioner or ~~his~~ the commissioner's deputy may hold hearings ~~to satisfy himself as to the justice on the merits~~ of any claim, and ~~he~~ shall cooperate with any employee in the enforcement of a claim against ~~his~~ the employee's employer in any case whenever, in ~~his~~ the commissioner's opinion, the claim is valid. The commissioner may consider any offsets, deductions, or counterclaims asserted by an employer during the commissioner's investigation and determination of the validity, enforceability, and amount of any claim for wages. An employer must disclose the basis for and the amount of any claimed offset, deduction, or counterclaim to the commissioner within the time the commissioner directs. The commissioner and ~~his~~ the commissioner's authorized representatives have the right to enter places of employment for the purpose of inspecting records and seeing that all provisions of this chapter are complied with.

SECTION 2. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies. Whenever the commissioner of labor determines that wages have not been paid; and that such unpaid wages constitute an enforceable claim, the commissioner ~~shall~~, upon the request of the employee, may take an assignment in trust for such wages or any claim for liquidated damages; in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any such assignments and may bring any legal action necessary to collect such claim. With the consent of the assigning employee at the time of the assignment, the commissioner has the power to settle and adjust any such claim to the same extent as might the assigning employee.

Approved March 25, 1997
Filed March 26, 1997