

LABOR AND EMPLOYMENT

CHAPTER 244

SENATE BILL NO. 2285

(Senators Holmberg, Campbell, Poolman)
(Representatives Delmore, Owens, Thoreson)

AN ACT to amend and reenact section 34-02-01 of the North Dakota Century Code, relating to exceptions from the duty of an employer to indemnify an employee for expenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-02-01 of the North Dakota Century Code is amended and reenacted as follows:

34-02-01. Employer must indemnify employee for losses and expenses - Exception.

An employer shall indemnify the employer's employee, except as prescribed in section 34-02-02, for all that the employee necessarily expends or loses in direct consequence of the discharge of the employee's duties as such or of the employee's obedience to the directions of the employer even though such directions were unlawful, unless the employee at the time of obeying such directions believed them to be unlawful. The obligation to indemnify does not include expenses incurred to purchase or rent tools of a trade or any other equipment that is also used by the employee outside the scope of employment.

Approved April 1, 2015

Filed April 1, 2015

CHAPTER 245

HOUSE BILL NO. 1257

(Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman)
(Senators Heckaman, Nelson, Oban)

AN ACT to amend and reenact sections 34-06.1-03, 34-06.1-05, 34-06.1-06, and 34-06.1-07 of the North Dakota Century Code, relating to unequal pay for men and women; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

34-06.1-03. Prohibition of discrimination.

1. ~~No~~An employer may not discriminate between employees in the same establishment on the basis of gender, by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite gender for comparable work on jobs ~~which~~that have comparable requirements relating to skill, effort, and responsibility. Differentials that are paid pursuant to established seniority systems, ~~job-descriptive systems that measure earnings by quantity or quality of production,~~ merit increase systems, or ~~executive training programs~~a bona fide factor other than gender, such as education, training, or experience, and which do not discriminate on the basis of gender, are not within this prohibition.
2. An employer ~~who~~that is paying a wage differential in violation of this chapter may not, in order to comply with this chapter, reduce the wage rates of any employee. ~~No~~
3. A person may not cause or attempt to cause an employer to discriminate against any employee in violation of this chapter. ~~No~~
4. An employer may not discharge or discriminate against ~~any~~an employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this chapter, except when proven that the act of the employee is fraudulent.
5. An unlawful employment practice occurs under this section when a discriminatory compensation decision or other practice is adopted; when an individual becomes subject to a discriminatory compensation decision or other practice; or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

SECTION 2. AMENDMENT. Section 34-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

34-06.1-05. Collection of unpaid wages and other relief - District court - Commissioner.

1. ~~Any~~An employer ~~wh~~o~~t~~at violates the provisions of section 34-06.1-03 is liable to the employee or employees affected in the amount of their unpaid wages, and in instances of willful violation in employee suits up to an additional equal amount as liquidated damages. ~~Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of the employee or group of employees and other employees similarly situated. The~~
2. Any one or more individuals claiming to be aggrieved by an unlawful employment practice under section 34-06.1-03 may bring an action in the district court in the judicial district in which the unlawful employment practice is alleged to have been committed, in the district in which the records relevant to the alleged unlawful employment practice are maintained and administered, or in the district in which the individual would have worked or obtained credit were it not for the alleged unlawful employment practice. In an action brought under this chapter, the court in such action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.
3. ~~An agreement by any such~~an employee to work for less than the wage to which ~~such~~the employee is entitled under this chapter ~~is~~does not a bar ~~to any such~~an action or ~~to a~~ voluntary wage restitution of the full amount due under this chapter.
4. At the written request of any~~an~~ employee claiming to have been paid less than the wage to which the employee may be entitled under this chapter, the commissioner may bring any legal action necessary ~~in~~on behalf of the employee to collect ~~such~~the claim for unpaid wages. The commissioner ~~may~~is not be required to pay the filing fee, or other costs, in connection with ~~such~~an action under this section. The commissioner ~~has the power to~~may join various claims against the employer in one claim for relief. In proceedings under this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of this chapter. The commissioner ~~has the power to~~may petition ~~any~~the district court of competent jurisdiction to restrain violations of section 34-06.1-03, and for ~~such~~ affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of this chapter.
5. If a person elects to bring an action in district court under this chapter, the commissioner shall dismiss any action pending before the commissioner which is based on the same alleged unlawful employment practice.

SECTION 3. AMENDMENT. Section 34-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

34-06.1-06. Statute of limitations.

Court action under this chapter may be commenced no later than two years after the claim for relief occurs~~unlawful employment practice occurred~~. However, if a complaint of a discriminatory practice is first filed with the commissioner, this period of limitation for bringing an action in the district court is tolled until the commissioner

completes an investigation or otherwise notifies the complainant the commissioner will be taking no further action on the complaint.

SECTION 4. AMENDMENT. Section 34-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

34-06.1-07. Records and reporting.

~~Every~~An employer subject to this chapter shall make, keep, and maintain ~~such~~ records of the wages and wage rates, job classifications, and other terms and conditions of employment of the ~~persons~~individuals employed by the employer, ~~and~~; shall preserve such records for ~~such periods of time~~as long as the employee is employed and two years thereafter; and shall make such reports ~~therefrom~~from the records as the commissioner prescribes.

Approved March 19, 2015

Filed March 19, 2015

CHAPTER 246

HOUSE BILL NO. 1047

(Legislative Management)
(Human Services Committee)

AN ACT to amend and reenact section 34-13-01 of the North Dakota Century Code, relating to licensing employment agents and agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-13-01 of 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 labor commissioner.
2. "Employee" means any ~~person~~individual, 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~~individual, firm, corporation, limited liability company, or association employing or seeking to enter into an arrangement to employ any ~~person~~individual through the medium or service of an employment agent.
4. "Employment agent" or "employment agency" ~~means:~~
 - a. ~~Means any person~~Means any individual, firm, corporation, limited liability company, or association in this state engaged for hire or compensation in the business of furnishing:
 - a-(1) ~~Persons~~Individuals seeking employment or changing employment, with information or other service enabling or tending to enable such ~~persons~~individuals to procure employment, by or with employers, other than such employment agent; or
 - b-(2) Any other ~~person~~individual, firm, corporation, limited liability company, or association ~~whethat~~ 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~~individual, firm, corporation, limited liability company, or association to procure such help.

The term "employment agent" or "employment agency" does

b. ~~Does not include any person:~~

- (1) ~~An individual~~, 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~~individual, firm, corporation, limited liability company, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides workforce safety and insurance coverage, and is responsible for the acts of the employees while rendering services to or for a third person. ~~The term "employment agent" or "employment agency" does not include a person~~

(2) An individual, firm, corporation, limited liability company, or association charging service fees or any other charges exclusively to employers.

(3) An individual, firm, corporation, limited liability company, or association licensed or certified by the department of human services to provide employment related services, to the extent the employment-related services are being provided for the clientele identified by the department in the issuance of the license or certificate.

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

Approved March 26, 2015

Filed March 26, 2015

CHAPTER 247

HOUSE BILL NO. 1202

(Representatives Ruby, Rick C. Becker, Kasper, Louser)
(Senators Campbell, Hogue, Laffen)

AN ACT to amend and reenact section 34-14-09.2 of the North Dakota Century Code, relating to withholding of awarded paid time off; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-09.2 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09.2. Limitations on accrued paid time off - Investigation.

1. If an employee separates from employment voluntarily, a private employer may withhold payment for accrued paid time off if:
 - a. At the time of hiring, the employer provided the employee written notice of the limitation on payment of accrued paid time off;
 - b. The employee has been employed by the employer for less than one year; and
 - c. The employee gave the employer less than five days' written or verbal notice.
2. If an employee separates from employment, a private employer may withhold payment for paid time off if:
 - a. The paid time off was awarded by the employer but not yet earned by the employee; and
 - b. Before awarding the paid time off, the employer provided the employee written notice of the limitation on payment of awarded paid time off.
3. As provided under section 34-14-05, an employee may report a violation under this section. If a report of violation is made within thirty days of the alleged violation, the labor commissioner shall investigate the merits of the claim. If a report is made more than thirty days following the alleged violation, the commissioner may investigate the merits of the claim.

SECTION 2. APPLICATION. This Act applies to separations from employment which occur on or after the effective date of this Act.

Approved April 9, 2015
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