

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1202

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1202
1/20/2015
Job Number 22221

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Withholding of accrued paid time off; and to provide for application.

Minutes:

Attachments #1 & 2

Chairman Keiser: Opens the hearing on HB 1202.

Representative Ruby~District 38, Bill Sponsor: There are different ways for paid time off to be provided to an employee. It is not a requirement. It is a fringe benefit. You can grant a certain amount which is provided immediately. Another way is an accrual basis where it is either through time, hours worked, or by paycheck. There is a hybrid version which can be granted at the beginning based on an accrual basis. The law that regulates this is not in century code, it's an administrative rule. Administrative rule says that if you award paid time off, it must be provided at time of separation or throughout the year no matter what the company policy says.

I was contacted by a company that was using the hybrid version. They sign the policy saying it can be used immediately but it is based on the accrual process. The situation happened where somebody left and requested the rest of it. According to administrative rule, that had to be granted. This law changes that if the company policy is signed at the beginning of employment, then the policy would work.

(6:42)

Representative Laning: There are two rules stricken, lines B & C of paragraph 1. Is this an expansion of those categories that can be withheld? Why are these two lines excluded?

Representative Ruby: Last session when we had this issue, when someone worked for a very short time and left, they accrued a small amount of time off. The employer tried to track them down to pay the small amount of time. If it wasn't claimed, they had to forward it to the unclaimed property division. If the employee left voluntarily and they worked for less than a year and they gave less than 5 days' notice, you don't have to seek them out to pay the time off. What originated this bill didn't fall into those categories? If at the time they were hired, they signed the paid time off policy then this hybrid version would be allowed.

Representative Laning: So these provisions can be written into a company policy and still be applicable as long as the employee has this information in writing?

Representative Ruby: Yes.

Representative Kasper: If an employer decides to not give paid time off, that is alright under current law?

Representative Ruby: That's correct.

Representative Amerman: On the 5th of January I voluntarily retired from Bobcat. Last year was my earning years for vacation. If I put in the required number of hours, I would get my four weeks of vacation. If I voluntarily retired on the 5th, would this allow them to not pay me my four weeks of vacation that I accrued last year?

Representative Ruby: No. Once you have accrued that, they have to pay it. It becomes like salary. Unless they have the policy where you "use it or lose it." The only situation this applies to is when it is based on an accrual basis but you are granted the ability to use it ahead of time. Or if it is used ahead of time and the employee leaves early, there is the option of withholding from the last check. That is allowed by the hybrid approach.

Representative M Nelson: You just said this doesn't apply to accrued time off. But the bill specifically says "May withhold payment for accrued paid time off."

Representative Ruby: If at the time of employment they sign the policy that explains that difference or they used more than they accrued, they would not have to pay you for that amount. It is accrued based on a percentage of time. Accrual, if built, they will pay. This is an employee-friendly bill.

Representative M Nelson: I know what you're saying but it is difficult to understand.

Representative Ruby: The one stipulation is they sign a policy at the time of employment. Maybe we need clarification. There is a lot of employee policies that would not hold up to administrative code.

Representative Becker: This bill adds "involuntarily." This applies if you get fired?

Representative Ruby: To some extent.

Representative Kasper: Starting on line 8, "private employer may withhold payment for time off granted and used by the employee but not yet earned according to company-written policy." Is that your intent?

Representative Ruby: That's sounds like my intent.

Vice Chairman Sukut: Line 9, "provided the employee written notice." Is that a policy statement?

Representative Ruby: Yes, I believe it could be but if it's taken too literally, it could be used as a justification to say "we don't have to." I see the concern and it can be drafted

Representative Becker: It would be common to limit and not pay for accrued time off. Employers frequently only allow employees to carry over so much to the next year. If a person does not use their accrued time off, they lose it. Is that in our Century Code?

Representative Ruby: I'm not sure how they can put a time certain on it. If it's challenged, it might be an issue. It's a fringe benefit. There should be a limit just like on salary.

(24:25)

Claude Sem~CEO of Farm Credit Services in Minot, ND: (Attachment 1).

(30:35)

Representative M Nelson: Do your employees get to accumulate each year?

Claude Sem: Our policy is pretty specific. You can only carry one week per year.

Representative M Nelson: Are they paid for the time they didn't use?

Claude Sem: No. They are not paid for the time they lose. They do carry over the one week.

Representative M Nelson: The involuntary section--in case of an accident, do you collect that back.

Claude Sem: It is not our policy to do that. It is employee friendly. Death is another example. There are cases where we would grant that employee extra benefits for hardships.

Representative M Nelson: What about the employee that takes off one month, works 2-3 months, gets another job offer and quits. Is he expected to pay back that month in January?

Claude Sem: That is correct. If you use more than your allotted vacation for the year that you have accrued, you would have to pay that back.

Vice Chairman Sukut: Line 9, "provide the employees written notice", would your policy be covered by this statement?

Claude Sem: Yes.

Representative Ruby: You heard Representative Kasper's suggestion. Would you be comfortable with that?

Claude Sem: I thought that was extremely well said. It hit the points that we wanted.

Representative Kasper: The alternative, if we don't change the law, would be that we will change our policy. It means you earn your paid and accrued vacation as time goes on. That means employees who want to take time off in January or February no longer could. If we fix the law, they could. The employer can be reimbursed if an employee tries to take advantage of the employer. Is that correct?

Claude Sem: That is correct. You have many employers with the same policy and they think they don't have a problem with it.

Chairman Keiser: When the labor department made the ruling, did they make a distinction between accrued vs. awarded?

Claude Sem: They had to question whether it was earned or whether it was granted. Our policy grants it.

Opposition

(39:30)

Tom Ricker~President of the ND AFL-CIO: I am in opposition because this bill is not clear. "Accrued" to me means "earned." I can't understand why we are changing voluntarily quits to adding involuntary which is very broad. My understanding of the intent was to prevent an employee from gaming the system and taking advantage of a benefit they haven't truly earned. Adding "involuntary" is adding a new dimension. The other question I have is removing "less than one year." Sometimes employees working less than one year have to do a job search. Those employees longer than one year were considered an attached employee and not required to do job search. If a new employee works two weeks and quits, they get six weeks of pay because they were told they have four weeks of vacation. Or if an employee only takes two weeks and they can only carry over a week, they lost a week. They do that for three years, they have lost three weeks of vacation. It's a wash. I understand what Representative Kasper said is a good step. But I think the "involuntary" shouldn't be in there. I also think it should apply to short-term employees.

(42:31)

Representative Ruby: I understand what you're saying. It's a fringe benefit and not a requirement of pay, employers could start scaling back. I'm surprised that you're not in favor of something that is going to help the employee.

Tom Ricker: I agree, we shouldn't be taking benefits away from anybody. So why aren't we addressing that issue? To me accrued includes time that the employee earned as in paid sick days.

Representative Ruby: I understand that. That is why the fix that we are looking at is to make sure "accrued" is not going to be affected either way. The issue with the "voluntary" or "involuntary" is if you don't make that either way, then the policy is still going to have a stipulation on it whether the employee leaves on their own or not. So you have an inconsistency in benefits.

Tom Ricker: I agree but I would like to see that in writing before I say if I would support it.

Representative Becker: If people are paid for earned vacation and a person is fired for good reason on January 5, do you feel they have earned the full year's vacation?

Tom Ricker: What is good reason? North Dakota is an at-will state. They could be fired because the employer's nephew needed a job.

Representative Becker: If a person was injured in January, would he earn a full year worth of vacation.

(47:33)

Tom Ricker: There are a lot of circumstances to look at such as how long the employee worked, etc.

Representative Becker: If we use the example of an employee who has worked for 15 years and has a car accident, do you feel that they earned a full year's salary if they were injured in January?

Tom Ricker: No.

Representative Becker: If the employee is incapacitated or fired on January 5, they haven't earned the salary for month to month and the vacation is the same as the salary, how is it possible that they can earn a whole year's worth of vacation?

Tom Ricker: In your example they earn it from month to month. That is not the same as the scenario where it is given up front.

Neutral

(50:18)

Troy Seibel~Commissioner of Labor: (Attachment 2).

(55:40)

Representative Ruby: We all agree the intent is not to go after the accrued time off. None of the earned or accrued time off is intended to be affected. As far as the issue with the earlier employees, would you agree that a lot of employers have the same policy. Employees that are with them a long time did sign and understand the policy. If the employers have that policy in place before, it continues.

Troy Seibel: The majority of paid-time-off complaints are on accrued-type policies.

Representative Kasper: How often can an employer change their hiring policy and benefit policy?

Troy Seibel: Yes, but we would require that a notice be given of the change.

Representative Kasper: Any employer at any time can change their policy as long as they provide written notice to the employee.

Troy Seibel: That's correct.

Representative Frantsvog: Can't an employee waive their right to the current policy?

Troy Seibel: Not in regard to earned leave. Once the leave is earned it becomes wages due. The employee could choose not to pursue it.

Representative Becker: The amendment would clarify the intent. A bill which eliminates the concern about not paying the earned accrued vacation would get to our intent better. That will supersede the administrative code. What are your thoughts on that?

Troy Seibel: I don't think that change will supersede the "use it or lose it" portion of administrative rule. You can ask an employee to forfeit unearned leave when they separate from employment. With a "use it or lose it" policy they have already earned it. The amendment would deal with a situation where an employee gets four weeks on January 1 but you have to work the whole year to earn those four weeks. That is a key distinction.

(1:03:26)

Representative M Nelson: If I had a policy that said you get four weeks of vacation for the year but you can use it anytime, would your department consider that earned on January 1?

Troy Seibel: Yes.

Representative M Nelson: If I'm specific in my policy that you are earning that throughout the year but you can use it at any time, then you haven't earned that on January 1? Correct?

Troy Seibel: That's correct. If you say that it can be used but is not earned yet, then we would not view it as being earned.

Representative Boschee: Common practice of employers shows their intention is to prorate it. Is there something we can do in code to back up that practice instead of changing administrative code?

Troy Seibel: I'm reluctant to put that into statute and dictate to employers what their policy should be.

Chairman Keiser: Changing this section will affect a vast majority of businesses in our state that asked for these exclusions. They will be running into some problems especially with the "less than one year" provision. In my opinion, we need to leave this section alone. We are trying to take a section on accrued leave and convert it to deal with one specific subsection which is granted but not accrued. These exclusions are important to employers in the state. We need to make a new subsection for granted benefits.

Troy Seibel: Having it clear in code what it means to earn leave vs. being granted leave would be a good idea. Our administrative rule could coexist with that statutory provision.

Chairman Keiser: I will defer to the sponsor of the bill.

Representative Ruby: I'm not opposed to that.

Troy Seibel: The key distinction is the fact that the policy said that you get four weeks on January 1. With no additional language, the department would take that as being earned on January 1

Chairman Keiser: Troy, I'm going to ask you to work with Representative Ruby to look at alternatives or amendments.

Chairman Keiser: Closed the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1202
1/26/2015
22518

Subcommittee
 Conference Committee

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Withholding of accrued paid time off and to provide for application.

Minutes:

Attachment 1

Chairman Keiser: Opens the work session on HB 1202.

Representative Ruby: Explains the amendments. (Attachment 1).

Chairman Keiser: Are we reinstating lines 11 & 12?

Representative Ruby: Yes, we are removing the overstrike.

Representative Becker: With the 2nd portion of the amendment, page 1, line 7, removes "or involuntarily". My confusion rises from the idea that it may be reasonable to withhold accrued time if they quit. If you remove involuntarily, you eliminate the possibility of withholding that time if they were fired. It would seem that would even be more important.

Representative Ruby: Having it just say when they voluntarily only applies to the subsection 1 of those provisions, that they may withhold that. The new language, subsection 2, just says if an employee separates from employment, a private employer may. That is in the case of whether they separate voluntary or involuntarily. That provision would follow through. The way the language in subsection 1 that was put in last session, but it wasn't the intent to change the current law. We've taken that "or involuntarily out", that way, that portion stays as it was and in subsection 2 applies to any separations.

Representative Becker: I understand, let's not change any law but add this, I would want to clarify that. I think section 1 specifically says, you can withhold payment for accrued time off. Where section 2, is dealing with awarded but not yet accrued. If we feel that it is reasonable to withhold accrued time off if a person quits and under the circumstances of A, B, & C, it would seem that it would be a better law if it included involuntarily, for those people that are fired.

Representative Ruby: The reason that was put in place where there is situations where the employer deals with an employee that working for a short period of time, not accrue very much time off, work less than a year and take off. They would have to pay the accrued time off on a separate check that might just be that with a small amount. It goes out to their last known address and they are not there anymore. Now they have to try and do a search and eventually that money goes to the unclaimed properties division. Under these benchmarks, the voluntary left, most of the time when you are firing somebody, you know when you are giving them their last check. When it's involuntary, you don't know when they are going to leave. That provision would be left alone with my amendment and put something else to clarify the situation that was in our committee.

Representative Amerman: You are addressing the concern your constituent had, that January 1st had all the paid time off, works two weeks but the court made him pay for the whole ball of wax. This address that he will only be paid for what he is actually earned and not awarded. That is basically what we are addressing here, is that situation?

Representative Ruby: Yes and a lot of companies have that in their policy that they will grant them the use of it based on the accrual they have though out the year.

Representative Amerman: I can support this.

Representative Kasper: Why do you want to add back in lines 11 & 12?

Representative Ruby: The intent was not to change the original language. It was not my intention and I want to be consistent with what I told the committee what my intention.

Chairman Keiser: A couple of session ago we dealt with this and came up with a compromise for the employer and employee. Accrued is earned and awarded is not earned and it's a grant that can be used.

Representative Ruby: We asked our employees if we went to an accrual and they said no, they did not like the accrued. We like this policy and we hope we can keep it. Companies will change their policies.

Representative Laning: Move to adopt the amendments 15.0312.02001.

Representative Ruby: Second.

Voice vote, motion carried to adopt amendment 15.0312.02001.

Representative Ruby: Move a Do Pass as Amended.

Representative M Nelson: Second.

Roll call was taken for a Do Pass as Amended on HB 1202 with 13 yes, 0 no, 2 absent and Representative Amerman is the carrier.

8/1-2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

Page 1, line 2, replace "accrued" with "awarded"

Page 1, line 7, remove "whether"

Page 1, line 7, remove "or involuntarily"

Page 1, line 8, remove the overstrike over the overstruck colon

Page 1, line 9, remove the overstrike over "a- At"

Page 1, line 9, remove "at"

Page 1, line 10, remove the overstrike over the overstruck semicolon

Page 1, remove the overstrike over line 11

Page 1, line 12, remove the overstrike over "~~e. The employee gave the employer less than five days' written or verbal notice~~"

Page 1, line 13, after "2." insert "If an employee separates from employment, a private employer may withhold payment for paid time off that has been awarded by the employer but not yet earned by the employee, if at the time of hiring, the employer provided the employee written notice of the limitation on payment of awarded paid time off.

3."

Renumber accordingly

Date: Jan 26, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0312.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Laning Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
voice vote
motion passes

Date: 11/26/15

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1202

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman	X	
Representative Devlin	Ab		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Amerman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1202: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1202 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "accrued" with "awarded"

Page 1, line 7, remove "whether"

Page 1, line 7, remove "or involuntarily"

Page 1, line 8, remove the overstrike over the overstruck colon

Page 1, line 9, remove the overstrike over "a. At"

Page 1, line 9, remove "at"

Page 1, line 10, remove the overstrike over the overstruck semicolon

Page 1, remove the overstrike over line11

Page 1, line 12, remove the overstrike over "~~e. The employee gave the employer less than five days' written or verbal notice~~"

Page 1, line 13, after "2." insert "If an employee separates from employment, a private employer may withhold payment for paid time off that has been awarded by the employer but not yet earned by the employee, if at the time of hiring, the employer provided the employee written notice of the limitation on payment of awarded paid time off.

3."

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1202

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1202
3/18/2015
Job Number 25041

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to withholding of awarded paid time off

Minutes:

Attachments

Chairman Klein: Opened the hearing.

Representative Ruby: Said that this is an employee friendly bill. It came about from an issue that a company had and you will hear more from someone from that company about the difference between accrued paid time-off and awarded paid time-off. Amendment Attached (1). (:20-6:08)

Kathy Berg, HR Director for Farm Credit Services in Minot, North Dakota: Written Testimony Attached (2). (6:30-8:55)

Senator Sinner: Asked if an employee has accrued paid time in the bank when they leave, do they get paid for the accrued paid time that they had earned?

Kathy Berg: Yes if they earned it they are paid for it.

Chairman Klein: What I heard you say is that you had it in your handbook and it was clear and everyone should have understood it except for the person who quit in March and so the challenge was on.

Kathy Berg: Yes that's correct.

Senator Burckhard: Has your company rewritten their policy on this?

Kathy Berg: No we are trying to keep are employee friendly policies intact so employees are awarded their vacation and are allowed to use it.

Chairman Klein: Asked if she was familiar with the Ruby amendment, it's just to clarify that folks who want to start this sort of thing can in the middle of the stream.

Kathy Berg: We are in support of it.

Senator Murphy: Is it possible that your company could reword their policy and take care of this?

Kathy Berg: Yes we could do that. Your question is that if we reword our policy to state?

Senator Murphy: You could reword to say when we hire you, you are awarded four weeks of paid time off which you can use at any time but if you leave before the year and don't earn it you can only be paid for the time that you earned.

Kathy Berg: That is exactly how our policy reads.

Senator Sinner: With the policy I work under, we are not awarded paid time off. However we are allowed to go negative. We can use what we will earn that year. Could you possibly do something similar to that?

Kathy Berg: We talked about doing that but there would be a lot of revamping of our computer system to make that happen.

Matthew Larsgaard, President and CEO of the Automobile Dealers Association of North Dakota and the North Dakota Implement Dealers Association: In support of the bill. This bill addresses a specific issue that they had encountered. Their policy manual states that PTO is accrued throughout the year on an even basis. He talked about an employee that left and hired attorneys and wanted their full two weeks paid to them but had only accrued one week of vacation. (13:27-15:50)

Senator Murphy: I noticed that you and Representative Ruby used the term employee friendly, isn't it employer friendly?

Matthew Larsgaard: Absolutely it is both employer and employee friendly.

Representative Ruby: I would like to follow up on a couple of things. This is beneficial to the employer but if we don't fix this they will change the policies and take that away from the employee. It is a dual benefit. (17:35-19:30)

Chairman Klein: Asked the Labor Commissioner to come up.

Troy Seibel, Labor Commissioner: He spoke to Senator Sinner's place of employment and said the practice where he works has a policy that awards employees their PTO at the beginning of the year. So under current administrative rule, if an employee would separate from his place of business you would have to award your employee all of their PTO. In the early nineties the labor commissioner put in the administrative rule that we currently have, if it is an earned and available and you separate from employment then you have to pay out whatever the employee has not used. (20:00-22:50)

Chairman Klein: Closed the hearing.

Senate Industry, Business and Labor Committee

HB 1202

March 18, 2015

Page 3

Senator Miller: Moved to adopt the amendment.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Poolman: Moved a do pass as amended.

Senator Burckhard: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Poolman will carry the bill.

TD
3/18/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1202

Page 1, line 14, replace "that has been" with "if:"

a. The paid time off was"

Page 1, line 15, replace ". if at the time of hiring" with "; and

b. Before awarding the paid time off"

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1202**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.0312.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Poolman Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Poolman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1202, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1202 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "that has been" with "if."

a. The paid time off was"

Page 1, line 15, replace ", if at the time of hiring" with "; and

b. Before awarding the paid time off"

Renumber accordingly

2015 TESTIMONY

HB 1202

House Bill 1202

House Industry, Business and Labor

Tuesday, January 20, 2015

Good morning, Chairman Keiser and members of the Industry, Business and Labor Committee. My name is Claude Sem, CEO of Farm Credit Services in Minot, North Dakota. I am here to provide testimony in support of House Bill 1202.

Farm Credit Services of North Dakota has an employee friendly annual leave policy. When you are hired as an employee you are given vacation days which you are allowed to use throughout the year with the approval of your supervisor. Many employers require you to work for several months before you can take annual leave. In other words you have to earn it before you use it. Most employees will tell you they would rather have the option of having vacation offered up front and be able to use it throughout the year instead of having to work the whole year before being able to take time off.

Farm Credit's annual leave policy states that if your employment with your employer is terminated, you will be paid for any remaining annual leave earned to your termination date. If the employee has taken more annual leave than earned at the time of termination, Farm Credit will be reimbursed for the annual leave taken that had not been earned.

Recently an employee terminated their position at Farm Credit. The former employee stated that they are entitled to all their vacation balance even though only a portion of it had been earned. For example, in January they were granted 4 weeks of vacation for the year. The employee resigned in March and requested that they be paid for the 4 weeks of vacation even though they did not work enough time to earn three weeks of those vacation hours. Our attorney disagreed and stated that our policy, which all employees are aware of at the time of hiring, is clear and does not require Farm Credit to pay for unearned annual leave. The former employee brought it to the Department of Labor for further interpretation. The Department of Labor determined that when annual leave is awarded, the employer must pay the entire year's leave whether it was earned or not. No employment contract or policy may provide forfeiture of awarded

paid time off upon separation. This is unlike Minnesota Law which states an employer's policy dictates what happens to unused paid time off when an employee is terminated.

There are many businesses today that have the same annual leave policy that we do. Most of them do not have a clue that their annual leave policy is not within North Dakota guidelines. The North Dakota Department of Labor stated to me that they agree that our policy is employee friendly, but it contradicts North Dakota annual leave policy. House bill 1202 will clarify that. I am not asking to change any employers annual leave policy. There is no hidden agenda. I am just asking you to clarify the Century Code, and enable Farm Credit to keep our employee friendly annual leave policy intact.

Jack Dalrymple
Governor

Troy T. Seibel
Commissioner



**DEPARTMENT OF LABOR
AND HUMAN RIGHTS**

State Capitol
600 E. Boulevard Ave. - Dept. 406
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

Testimony on HB 1202
Prepared for the
House Industry, Business and Labor Committee

January 20, 2015

Good morning Chairman Keiser and members of the Industry, Business and Labor Committee, my name is Troy Seibel, and I am the Commissioner of Labor. I appear before you today neutral on HB 1202. I am here to provide information about the current statutes and regulations regarding the payout of accrued leave upon separation from employment and how HB 1202 alters these statutes and regulations.

N.D.A.C. § 46-02-07-02(12)

By administrative rule, the Department of Labor and Human Rights has long had a policy that once an employee earns leave that is available for use, that leave becomes wages upon the employee's separation from employment and must be paid to the employee. Under N.D.A.C. § 46-02-07-02(12), no employment contract or policy may provide for forfeiture of earned paid time off upon separation. This means that an employer cannot have a policy that provides for the forfeiture of earned leave, which is available for use, when an employee leaves employment. However, N.D.A.C. § 46-02-07-02(12) does allow an employer to have a policy that requires employees to take paid time off by a certain date or lose the paid time off (a "use it or lose it" policy), provided the employee is given a reasonable opportunity to use the paid time off.

N.D.C.C. § 34-14-09.2

In 2011, the Legislature passed an exception to the Department's administrative rule, which became N.D.C.C. § 34-14-09.2. N.D.C.C. § 34-14-09.2 allows an employer to withhold the payment of accrued, paid time off if the employee: 1) has worked for the employer for less than one year, 2) voluntarily separates from employment, 3) provides less than 5 days notice, and 4) received written notification from the employer at the time of hire of the employer's policy regarding the limitation on payment of accrued, paid time off. This is the only exception to N.D.A.C. § 46-02-07-02(12). Therefore, under current law, unless all of the requirements set forth in N.D.C.C. § 34-14-09.2 are met, an employer must pay an employee for accrued, paid time off which is available for use when the employee separates from employment.

HB 1202

HB 1202 would amend N.D.C.C. § 34-14-09.2 and allow all private employers to establish a policy which limits payment of accrued time off to any employee, regardless of how long the employee has worked for the employer, whether the employee separates voluntarily or involuntarily, and regardless of how much notice the employee provides (if he or she separates voluntarily). Written notification of the employer's policy must be provided to the employee at the time of hire. HB 1202 would not only amend N.D.C.C. § 34-14-09.2, but would also substantially preempt N.D.A.C. § 46-02-07-02(12).

While neutral on HB 1202, I have two points I would like to discuss. My first is in regards to how it affects current employees that have been employed for longer than one year. HB 1202 provides that it applies to all separations which occur on or after its effective date. This is fairly straightforward. However, its plain language states that it is only effective for those employees that were provided written notification of the employer's policy at the time of hire. This would appear to indicate that HB 1202 would not apply to current employees of an employer, as they would not have been provided written notice of the employer's policy at the time of hire. However, I want to be sure I am understanding HB 1202 correctly to ensure the Department is properly implementing it should it pass.

Second, I would point out HB 1202 will now primarily shift the focus of our investigations from determining how much accrued, paid time off an employee may or may not be entitled to whether the employee received written notification of the employer's policy. I would anticipate numerous claims from employees that they were not provided written notification of the employer's policy regarding the limitation on the payment of accrued paid time off, which the Department would be required to investigate.

Thank you and I'd be happy to answer any questions you may have.

Jan 26, 2015

15.0312.02001
Title.

Prepared by the Legislative Council staff for
Representative Ruby

January 22, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1202

Page 1, line 2, replace "accrued" with "awarded"

Page 1, line 7, remove "whether"

Page 1, line 7, remove "or involuntarily"

Page 1, line 8, remove the overstrike over the overstruck colon

Page 1, line 9, remove the overstrike over "a. At"

Page 1, line 9, remove "at"

Page 1, line 10, remove the overstrike over the overstruck semicolon

Page 1, remove the overstrike over line 11

Page 1, line 12, remove the overstrike over "~~c. The employee gave the employer less than five days' written or verbal notice~~"

Page 1, line 13, after "2." insert "If an employee separates from employment, a private employer may withhold payment for paid time off that has been awarded by the employer but not yet earned by the employee, if at the time of hiring, the employer provided the employee written notice of the limitation on payment of awarded paid time off.

3."

Renumber accordingly

15.0312.03001
Title.

Prepared by the Legislative Council staff for
Representative Ruby
March 3, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1202

Page 1, line 14, replace "that has been" with "if:

a. The paid time off was

Page 1, line 15, replace ".if at the time of hiring" with "; and

b. Before awarding the paid time off"

Renumber accordingly

House Bill 1202

House Industry, Business and Labor

Wednesday, March 18, 2015

Good morning, Chairman Klein and members of the Industry, Business and Labor Committee. My name is Kathy Berg, HR Director for Farm Credit Services in Minot, North Dakota. I am here to provide testimony in support of House Bill 1202.

Farm Credit Services of North Dakota has an employee friendly annual leave policy. When you are hired as an employee you are given vacation days which you are allowed to use throughout the year with the approval of your supervisor. Many employers require you to work for several months before you can take annual leave. In other words you have to earn it before you use it. Most employees will tell you they would rather have the option of having vacation offered up front and be able to use it throughout the year instead of having to work the whole year before being able to take time off.

Farm Credit's annual leave policy states that if your employment with your employer is terminated, you will be paid for any remaining annual leave earned to your termination date. If the employee has taken more annual leave than earned at the time of termination, Farm Credit will be reimbursed for the annual leave taken that had not been earned.

Recently an employee terminated their position at Farm Credit. The former employee stated that they are entitled to all their vacation balance even though only a portion of it had been earned. For example, in January they were granted 4 weeks of vacation for the year. The employee resigned in March and requested that they be paid for the 4 weeks of vacation even though they did not work enough time to earn three weeks of those vacation hours. Our attorney disagreed and stated that our policy, which all employees are aware of at the time of hiring, is clear and does not require Farm Credit to pay for unearned annual leave. The former employee brought it to the Department of Labor for further interpretation. The Department of Labor determined that when annual leave is awarded, the employer must pay the entire year's leave whether it was earned or not. No employment contract or policy may provide forfeiture of awarded

paid time off upon separation. This is unlike Minnesota Law which states an employer's policy dictates what happens to unused paid time off when an employee is terminated.

The House Industry, Business and Labor Committee did amend the original bill, which Farm Credit Services of North Dakota is in support of. I would like to thank Representative, Dan Ruby, and others in the House Industry, Business and Labor Committee for their support of this important bill.

There are many businesses today that have the same annual leave policy that we do. Most of them do not have a clue that their annual leave policy is not within North Dakota guidelines. The North Dakota Department of Labor stated to me that they agree that our policy is employee friendly, but it contradicts North Dakota annual leave policy. House bill 1202 will clarify that. I am not asking to change any employers annual leave policy. There is no hidden agenda. I am just asking you to clarify the Century Code, and enable Farm Credit to keep our employee friendly annual leave policy intact.