

LABOR AND EMPLOYMENT

CHAPTER 281

HOUSE BILL NO. 1082

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

WAGE AND WORKING CONDITION RULES

AN ACT to amend and reenact sections 34-06-03, 34-06-04, 34-06-14, 34-06-17, and 34-06-19 of the North Dakota Century Code, relating to authority of the labor commissioner to adopt rules on wages and working conditions for employment in this state; and to repeal sections 34-06-09, 34-06-10, 34-06-11, 34-06-12, and 34-06-13 of the North Dakota Century Code, relating to authority of the labor commissioner to issue orders on wages and working conditions for employment in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-03 of the North Dakota Century Code is amended and reenacted as follows:

34-06-03. Commissioner may adopt standards by rule. The commissioner, ~~in the manner prescribed in this chapter,~~ may ascertain and prescribe by rule:

1. Standards of hours of employment for employees and what are unreasonably long hours for employees in any occupation within this state.
2. Standards of conditions of labor for employees in any occupation within this state and what surroundings or conditions, sanitary or otherwise, are detrimental to the health or morals of employees in any such occupation.
3. Standards of minimum wages for employees in any occupation in this state.
4. Standards of minimum wages for minors in any occupation within this state and what wages are unreasonably low for any such minor workers.

SECTION 2. AMENDMENT. Section 34-06-04 of the North Dakota Century Code is amended and reenacted as follows:

34-06-04. Power to make rules - Posting by employers. The commissioner may prepare, adopt, and promulgate rules and regulations under chapter 28-32 to carry into effect implement the various provisions of this chapter and may make any rules and regulations ~~which may be required for the selection of members of conferences provided for in this chapter and for the regulation of the mode of procedure at such conferences.~~ Before filing the notice of rulemaking and

the proposed draft of rules under section 28-32-10, the commissioner shall send notice of the proposed rules to and solicit input from associations with statewide membership of which the primary focus is representing business or labor interests. The commissioner shall provide a summary of rules adopted under this chapter to every employer affected by the rules. The employer shall keep a copy of the summary posted in a conspicuous place in a commonly frequented area of the employer's establishment in which employees work.

SECTION 3. AMENDMENT. Section 34-06-14 of the North Dakota Century Code is amended and reenacted as follows:

34-06-14. Right of appeal from commissioner's decision limited. Except as otherwise provided in this chapter, all questions of fact arising under this chapter must be determined by the commissioner. There may be no appeal from the decision of the commissioner on any question of fact, but there is a right of appeal from the commissioner to the district court of Burleigh County from any ruling or holding on any question of law included or embodied in any decision ~~or order~~ of the commissioner, and there is a right of appeal from the district court to the supreme court of this state. In all such appeals, the attorney general shall appear for and represent the commissioner.

SECTION 4. AMENDMENT. Section 34-06-17 of the North Dakota Century Code is amended and reenacted as follows:

34-06-17. Investigation of compliance with ~~orders~~ rules - Failure to observe or comply. The commissioner, from time to time, shall investigate and ascertain whether or not employers in this state are observing and complying with ~~his orders~~ rules issued pursuant to the provisions of this chapter, and shall take such steps as may be necessary to cause the prosecution of employers failing to observe or comply therewith.

SECTION 5. AMENDMENT. Section 34-06-19 of the North Dakota Century Code is amended and reenacted as follows:

34-06-19. Penalty for violation of chapter. Any person who violates any of the provisions of this chapter, or any ~~order, rule, or regulation~~ issued pursuant thereto, is guilty of a class B misdemeanor.

SECTION 6. REPEAL. Sections 34-06-09, 34-06-10, 34-06-11, 34-06-12, and 34-06-13 of the North Dakota Century Code are repealed.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 282

SENATE BILL NO. 2079

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

EMPLOYMENT AGENT DEFINITION AND LICENSING

AN ACT to amend and reenact subsection 4 of section 34-13-01, sections 34-13-03 and 34-13-12, subsection 2 of section 34-13-13.1, and subsection 1 of section 34-13-15 of the North Dakota Century Code, relating to definition of employment agent or employment agency and licensure of employment agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 34-13-01 of the North Dakota Century Code is amended and reenacted as follows:

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. The term "employment agent" or "employment agency" does not include a person, firm, corporation, limited liability company, or association charging service fees or any other charges exclusively to employers.

SECTION 2. AMENDMENT. Section 34-13-03 of the North Dakota Century Code is amended and reenacted as follows:

34-13-03. License application - Schedule of fees - License issuance and revocation. Annually, every applicant for a license shall file with the commissioner a written application stating the name and address of the applicant, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name

under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application must also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and must be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and treasurer thereof. If the applicant is a limited liability company, the application must state the names and addresses of the managers and governors of the limited liability company and must be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them the managing partner or partners. The application must also state whether or not the applicant is, at the time of making application, or has at any previous time been, engaged or interested in, or employed by anyone engaged in, the business of conducting an employment agency, either in this state or any other, and if so, when and where. The application must also give as reference the names and addresses of at least three persons of reputed business or professional integrity, located within the state. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commissioner a schedule of the fees or charges to be collected by such employment agent for any services rendered, together with all rules and regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commissioner. It is unlawful for any employment agent to charge, demand, collect, or receive a greater compensation for any service performed by the agent than is specified in such schedule filed with the commissioner.

The commissioner may issue a license to an employment agent and refuse to issue a license if, after due investigation, the commissioner finds that the character of the applicant makes the applicant unfit to be an employment agent, or when the premises for conducting the business of an employment agent are found to be unfit. The commissioner may revoke a license upon due notice to the holder of the license and upon due cause. Failure to comply with the duties, terms, conditions, or provisions of this chapter, or any lawful orders of the commissioner is due cause to revoke a license.

SECTION 3. AMENDMENT. Section 34-13-12 of the North Dakota Century Code is amended and reenacted as follows:

34-13-12. Schedule of charges posted and printed on receipts - Sections of law posted - Information given to applicant for employment. Every employment agent possessing a valid license shall post in a conspicuous place in a room used for business purposes in the employment office and which is open to the public, a schedule showing the amount of the service charges to be made to ~~either employees, employers, or both~~. The amount collected may not exceed the schedule of charges indicated.

A licensed employment agent shall post in a conspicuous place in a room used for business purposes in the employment office a copy of sections 34-13-12 and 34-13-15, provided by the commissioner.

No employment agent holding a license may direct any applicant to apply for employment at any place outside of the office of such employment agent without first giving to such applicant, in written form, the name and address of the employment

agent, the name of the applicant, the name and address of the person to whom the applicant is referred, and the kind of employment supposed to be obtainable at such place. Nothing herein may be construed to prohibit an employment agent from directing an applicant by telephone to apply for employment, but such telephone message must be confirmed in writing by the employment agent within twenty-four hours after the telephone conversation, and a ~~carbon~~ copy of such confirmation must be kept on file at the place of business of the employment agent for a period of one year.

SECTION 4. AMENDMENT. Subsection 2 of section 34-13-13.1 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~This section applies to all licensees.~~ Every licensee employment agency shall submit copies of all contracts and fee schedules used by ~~such the~~ agency or agent to the commissioner of labor for approval. No contract or fee between a ~~licensee~~ an employment agency and ~~an employer~~ or an employee is valid without the commissioner's approval. In approving or disapproving such contracts and fees, the commissioner shall issue a written determination. This determination is subject to review and appeal under chapter 28-32.

SECTION 5. AMENDMENT. Subsection 1 of section 34-13-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Every license, ~~of whatever classification,~~ must be hung in a conspicuous place in the main office of the employment agency.

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 283**HOUSE BILL NO. 1382**
(Representatives N. Johnson, Grosz)
(Senator Krebsbach)**DIRECT DEPOSIT OF WAGES**

AN ACT to amend and reenact section 34-14-02 of the North Dakota Century Code, relating to direct deposit of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-02 of the North Dakota Century Code is amended and reenacted as follows:

34-14-02. Agreed payday - Direct deposit. Every employer shall pay all wages due to employees at least once each calendar month on regular agreed paydays designated in advance by the employer, in lawful money of the United States or, with checks on banks convenient to the place of employment. ~~If an employee participates, or with direct deposit in a direct deposit program, that employee's employer shall deposit the employee's wages into the financial institution of the employee's choice. An employer may not require an employee to directly deposit the employee's wages into a financial institution.~~

Approved April 1, 2003
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