

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2187

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2187

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7271

Committee Clerk Signature

Eva Letell

Minutes:

Chairman Klein: We will open the hearing on Senate Bill 2187.

Senator Hogue: Written Testimony Attached. In favor of Senate Bill 2187.

Chairman Klein: You allude to the Minnesota law, is that what we are looking at doing here?

> Senator Hogue: It was a decision of the Minnesota Supreme Court said is that we have a
employee handout here and the handout said we give you vacation pay and we will award that
to you so many hours of vacation pay for so many hours of work. But the manual also said if
you don't give us notice we reserve the right to withhold some of that vacation pay. The
Minnesota Supreme Court said that was perfectly fine.

Senator Andrist: We're not talking about salary, just the vacation pay.

Senator Hogue: That's correct.

Discussion continued about the bill and Senator Hogue's' written testimony.

Senator Behm: How much notice are you asking for?

Senator Hogue: We want them to give a ten day notice.

Chairman Klein: When removing verbal we can scratch that our on a napkin?

Senator Hogue: That's the concept. We felt it best to be in writing so it shows there some
document that protects the employee and reduces the amount of the dispute.

Discussion continued.

Paul Simonson, Vice President of Human Resources, and Trinity Health in Minot: Written Testimony Attached.

Chairman Klein: Is there a release form that you do have, it not difficult for an employee to come in and say I will be leaving in ten days? Do you make it difficult?

Paul: We do have forms that people can fill out and they would be quick and easy some for someone to complete and turn into their manager. The difficult part is that we usually don't here from the employee again.

Discussion continued on Trinity Health experience with people quitting.

John Risch, United Transportation Union: Written Testimony Attached. In opposition.

Senator Horne: The labor department has found a fairly balanced way to address this issue, what is that fairly balanced way?

John: The fairly balanced way to address the issue of severance pay and that is that if you earned that vacation pay you are entitled to it.

Senator Potter: Isn't what you're saying is that this vacation time is just deferred pay?

John: Certainly, often employees will go to work a place that offers vacation pay.

Lisa Fair McEvers, Commissioner of Labor: Written Testimony Attached. Position Neutral.

Chairman Klein: Do you feel adopting these changes will create a problem?

Lisa: It's not a problem just changing the rule.

Discussion continued.

Chairman Klein: We will close the hearing on Senate bill 2187.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2187

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7857

Committee Clerk Signature

Erin Liebelt

Minutes:

Chairman Klein: Looking at Senate Bill 2187. There were amendments.

Motion by Senator Andrist to move the amendment. Seconded by Senator Wanzek.

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

Senator Andrist: I am not sure this bill will accomplish everything we want it to.

Senator Potter: I don't think this is good public policy and this is creating an artificial difference between vacation time earned and paid, which doesn't exist in code today. There treated the same, you earned that time you're paid it. This creates a remarkably different scenario. It's a radical departure from what are employment law is in North Dakota. It is so easily fixed under the employer's authority. The employer has to adjust the references. This is too much of a change.

Senator Horne: I understand the plight of the employer's. To make it more reasonable this notice should be included in the employment agreement. This doesn't speak to this at all. It's weak and I won't support it.

Motion to do pass as amended, Senator Andrist. Seconded by Senator Nodland.

Roll Call Vote: Yes: 4 No: 3 Absent: 0

Floor Assignment: Senator Andrist

PROPOSED AMENDMENTS TO SENATE BILL NO. 2187

Page 1, line 11, remove "or verbal"

Page 1, line 14, remove "If a report of violation is made within thirty days of the alleged violation,"

Page 1, remove lines 15 through 17

Renumber accordingly

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Date: 1/27/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2187

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Andrist Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm		✓
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne		✓
Senator John M. Andrist	✓		Senator Tracy Potter		✓
Senator George Nodland	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Andrist

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

REPORT OF STANDING COMMITTEE

SB 2187: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2187 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "or verbal"

Page 1, line 14, remove "If a report of violation is made within thirty days of the alleged violation."

Page 1, remove lines 15 through 17

Renumber accordingly

2009 TESTIMONY

SB 2187

1 This result was adopted by the Minnesota Supreme Court a few years ago.
2 In a decision involving a Minnesota employee and Minnesota employer, the
3 Minnesota Supreme Court ruled it was permissible for the employer to withhold
4 the accrued vacation pay if the employer advised the employee that vacation pay
5 may be withheld in the event the employee fails to notify the employer of the
6 employee's termination of employment. SB 2187 is designed to adopt a similar
7 rule in North Dakota, with some limitations.

8 At its core, SB 2187 is designed to encourage employees to do the right
9 thing for their employer and their co-employees. We can all recognize that when
10 an employee fails to appear for work and fails to tell the employer, that
11 employees places unnecessary burden on the employer and the employee. The
12 employer is now forced to find a replacement worker on short notice. Still worse,
13 the pool of existing employees now have to modify their personal and work
14 schedule to accommodate the unexpected shortfall of help in the workplace. So,
15 until a replacement is found, remaining workers bear the consequences of the
16 departing employee's failure to notify the employer.

17 I submit this problem can be alleviated by adopting the Minnesota rule.
18 We should not compel short term employees to inform their employers, but we
19 can encourage them through SB 2187.

1 I offer several amendments to SB 2187 after seeking the counsel of the ND
2 Labor Commissioner. As originally drafted, SB 2187 would have permitted verbal
3 or written notice. However, without a writing, it may be difficult to ascertain
4 whether a notice was given. The proposed amendment thus deletes the verbal
5 requirement. A written requirement is not particularly onerous because the same
6 may be made in handwriting and it will benefit the employee who has proof of
7 compliance with the notice requirement.

8 The second amendment gives the Labor Commissioner the authority to
9 investigate any complaint and to devote the investigatory resources she deems
10 appropriate for the complaint involved.

11 SB 2187 is a reasonable approach to a persistent problem that burdens
12 employers and co-employees. I respectfully urge this committee to adopt the
13 same.

14

15

John Hoeven
Governor

Lisa K. Fair McEvers
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

nd.gov/labor
nd.gov/humanrights

Testimony on SB 2187
Prepared for the
Industry, Business and Labor Committee
January 20, 2009

Chairman Klein and members of the Industry, Business and Labor Committee, I am Lisa Fair McEvers, Commissioner of Labor. I appear before you in regard to SB 2187. My position on this bill is neutral. I am here to provide information on how SB 2187 may affect the Department of Labor.

Wage claims involving allegations of unpaid vacation (paid time off or PTO) are common. Since the 2003-05 biennium, the percentage of wage claims involving PTO have ranged from 22% to 40%.

The proposed bill would affect the department's current policy on PTO set forth in N.D. Admin. Code § 46-02-07-02(12) which currently states:

Paid time off includes annual leave, earned time, personal days, or any other provisions of the employment relationship intended to provide compensation as vacation. Provisions where employees earn time off and the employees can use the days for any purpose, are paid time off unless separate arrangements are made for sick leave.

Paid time off, once earned or awarded, is considered wages upon separation from employment. If the paid time off is available for use at the time of separation from employment, the employer must pay the employee for that time at the regular rate of pay earned by the employee prior to separation.

No employment contract or policy may provide for forfeiture of earned paid time off upon separation. An employment contract or policy may require an employee to take vacation by a certain date or lose the vacation (use it or lose it), provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of such contract or policy provision.

The administrative rule on PTO has been the longstanding practice of the department, as it was drafted in 1997.

As the bill is currently drafted, I have two major concerns. First, by providing that employees may give notice either orally or in writing, I am concerned that most employees may choose to give verbal notice, which would be easier to provide. The negative consequence is that verbal notice would also be more difficult to prove if the date of the notice given is later contested in a claim for wages.

My other concern is the requirement that the department hold hearings. While the department has authority to hold hearings under N.D.C.C. § 34-14-05, it is not mandatory. The practice of the department is to conduct investigations using documents provided by the parties in addition to interviews conducted by the investigative staff. The department does not currently have a hearing room nor does it have the staff or equipment necessary to conduct mandatory hearings. I believe the department can conduct adequate investigation of claims without the requirement of a hearing.

Members of the committee:

I want to thank you for the opportunity to come before you to speak on behalf of Senate Bill 2187. My name is Paul Simonson and I am from Minot, North Dakota. I am currently employed as the Vice President of Human Resources at Trinity Health in Minot, and have been with Trinity, in the Human Resource field, for close to 34 years. As many of you may know, Trinity Health is currently the sole community provider for acute care services and one of two providers of long term care services in Minot. In addition Trinity is one of the largest employers in the state of North Dakota.

Although not a native of ND, I chose to settle here because of the quality of life and because I can't think of a better place to live and raise a family. When I first started working at Trinity, the size of the organization, although the largest in Minot, was comparatively small by today's standard. We employed approximately 650 staff at the hospital and about 275 at the Trinity Homes. Today, Trinity Health represents approximately 2650 employees located not only in Minot but also in 10 remote locations which provides health care to much of the northwest quadrant of the state.

Some the healthcare challenges we faced in the early days of my career were very different than the ones we are confronted with today, however many are very similar. Delivery of quality health care impacting the quality of life, caring for those that can't care for themselves, emergency services are but a few of the constants in our primary focus and our mission. Acquisition of changing technology, health care reimbursements, accessibility, staffing, and various career opportunities are some of the issues just to

name a few that we are facing today. North Dakota has always been concerned with population growth and stability and in the past it seemed as though employees also had a greater commitment to employer and position than they have today. The changing demographic of our work force greatly contributes to this stability or the lack of it.

Today, the American work force can be separated into the following four categories: Veterans 1922 - 1945, Baby Boomers 1946 - 1959, Generation X 1960 - 1984 and Generation Y 1985 - 2000. This is certainly no different for Trinity Health. The statistical makeup of Trinity is 4.8% Veterans, 31.8% Baby Boomers, 52.9 % Gen X and 10.5% Gen Y. Each of these groups are influenced by differing factors, however, the groups of Veterans and Baby Boomers is shrinking and the Generation X & Y group's are growing. It is the Veterans and Baby Boomers that have traditionally had the greater stability and commitment to their employer and position. Today it is acknowledged that people will change positions seven to eight times and perhaps more during their working life not counting the part time jobs we all experienced during our teen age years. It is also suggested that people are changing vocations three to four times during their working career. The fact that people have a greater number of choices today than in the past, speaks to the great diversity of our work force and the expanding economy in our great state.

My concern however does relate to the stability of people and more particularly to the commitment to the organizations that they work for. Annually we experience significant rates of turnover. People leave their jobs for a variety of reasons including wanting to

explore other opportunities, other locations, or for personal reasons not related to their job but because of family and community commitments. I understand and support the idea that people have personal commitments which influence the priorities in their lives but I also believe when an individual accepts employment with an organization they establish a relationship with that organization.

If it becomes necessary to sever that relationship I believe it is appropriate that an employee should give an employer notice of intent to leave the organization. Looking back on our turnover rates, I find that 17% of those people terminating their employment in 2008 were listed as "no call no show" (leaving work and giving no notice or indication they would not return) or as walking off the job. There are significant difficulties that this presents not the least of which are scheduling and staffing and delivery of service.

It is for this reason that I support Senate Bill 2187 and ask for your consideration of the measure.



united
transportation
union

750 Augsburg Avenue
Bismarck, ND 58504-7009
Office: 701-223-0061
Fax: 701-223-0061
E-mail: utu@bis.midco.net

JOHN RISCH
North Dakota Legislative Director

Testimony of John Risch
Before the House Transportation Committee
In Opposition to SB 2187
January 20, 2009

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

Oppose SB 2187:

1. Undermines the Employment at Will Doctrine.

Unless there is a contract or a collective bargaining agreement that expressly states the employment terms, an employee is an employee at will. That means that an employer may terminate the employee's job with or without good cause and that the employee may quit his job for any reason. Either party can leave the relationship for any reason rather than be locked into an arrangement that is not working.

There is no requirement for notice to be given or for severance pay to be paid.

2. If 10 day notice is to be required by the employee then 10 days pay should be required when an employee is terminated.

3. Issue of separation pay has been carefully considered by Labor department and wage panels over the years and the payment of PTO (paid time off) at the termination of employment is the result. Sick pay and severance pay is not payable.

4. If your employer promises vacation pay and you accept the job based on that promise than that promise, that commitment should be kept.

5. Issue of quitting ones job. How many times "He didn't quit.. he was forced out." BNSF example. Unfair to force someone to quit and then deny earned vacation.

We all agree advance notice is a good idea and I suspect it usually takes place since most people need job references.

The Labor department has found a fairly balanced way to address this issue, enacting SB 2187 would undermine that balance and is blatantly unfair.