

# LABOR AND EMPLOYMENT

## CHAPTER 307

### SENATE BILL NO. 2226

(Senators Watne, Mutch)  
(Representative N. Johnson)

## EMPLOYER RETALIATION PROHIBITIONS

AN ACT to amend and reenact sections 34-01-20 and 34-11.1-04 of the North Dakota Century Code, relating to prohibited employer retaliation for employee reporting of violations of laws, ordinances, or regulations.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 34-01-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **34-01-20. 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~~<sub>1</sub> state, or local law, ordinance, regulation, or rule to an employer ~~or~~<sub>1</sub> to<sub>1</sub> a governmental body<sub>1</sub> or a law enforcement official.
  - b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.
  - c. The employee refuses an employer's order to perform an action that the employee believes violates local, state<sub>1</sub>, or federal law ~~or~~<sub>1</sub> ordinance, rule<sub>1</sub>, 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. 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~~ one hundred eighty 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, backpay

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 backpay 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~~ shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section ~~must~~ shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. 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.

**SECTION 2. AMENDMENT.** Section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited - Furnishing false information.**

1. An employee may, without fear of reprisal, report in writing to their respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:
  - a. A job related violation of local, state, or federal law, rule, regulation, or ordinance.
  - b. ~~A job related violation of state or federal agency rules.~~
  - c. The job related misuse of public resources.
2. For having made a report under subsection 1 no employee will:
  - a. Be dismissed from employment.
  - b. Have salary increases or employment-related benefits withheld.
  - c. Be transferred or reassigned.
  - d. Be denied a promotion ~~which~~ that the employee otherwise would have received.
  - e. Be demoted.
  - f. Be discriminated against in any term or condition of employment.

3. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this subsection may appeal first to the state personnel board and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the state personnel board.

Approved April 17, 2001

Filed April 17, 2001

## CHAPTER 308

### HOUSE BILL NO. 1183

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

## EMPLOYMENT SEPARATION WAGE PAYMENT

AN ACT to amend and reenact section 34-14-03 of the North Dakota Century Code, relating to wages payable upon separation from employment.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 34-14-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **34-14-03. Employees who are separated from payroll before paydays.**

4. ~~Whenever an employee is discharged or terminated from employment by an employer, separates from employment voluntarily, or is suspended from work as the result of an industrial dispute, the employee's unpaid wages or compensation becomes due and payable at the regular paydays established in advance by the employer for the periods worked by the employee. When an employer discharges or terminates an employee, the unpaid wages or compensation of that employee become due immediately, and the employer shall pay those wages to the employee within fifteen days or at the next regular pay period, whichever occurs first, by certified mail at an address designated by the employee or as otherwise agreed upon by both parties. If the employer fails to pay the wages within the stated time, the employee may charge and collect wages in the sum agreed upon in the contract of employment for each day the employer is in default until the employer has paid in full, without rendering any service therefor, except the employee shall cease to draw wages or salary thirty days after such default.~~
2. ~~Whenever an employee, not having a written employment contract for a definite period, quits or resigns his employment, the wages or compensation earned become due and payable not later than the next regular stated payday.~~
3. ~~In the event of the suspension of work as the result of an industrial dispute, the wages and compensation earned and unpaid at the time of said suspension become due and payable at the next regular payday, as provided in section 34-14-02, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of such industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the employee's duties.~~

Approved March 13, 2001  
Filed March 13, 2001

## CHAPTER 309

### SENATE BILL NO. 2153

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

## COMMISSIONER OF LABOR WAGE COLLECTION

AN ACT to amend and reenact section 34-14-09 of the North Dakota Century Code, relating to the time period during which unpaid wages may be collected by the commissioner of labor on behalf of a wage claimant.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

**34-14-09. Employees' remedies - Limitation on wages collectible.**

Whenever the commissioner of labor determines that wages have not been paid and that ~~such~~ the unpaid wages constitute an enforceable claim, the commissioner, upon ~~the~~ request of the employee, may take an assignment in trust for ~~such~~ the wages or ~~any~~ a 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~~ the claim. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner ~~has the power to~~ may settle and adjust ~~any such~~ the claim to the same extent as ~~might~~ the assigning employee.

Approved March 16, 2001  
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