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WHISTLEBLOWER LAWS AND RULES

INTRODUCTION

In general, a whistleblower protection law protects an employee who reports misconduct or a violation of law by an employer or a fellow employee. Under North Dakota law, there are two provisions that are commonly referred to as whistleblower protection laws, and there are administrative rules adopted by the Labor Department and the Office of Management and Budget which address these two laws.

STATE LAWS

All Employees

North Dakota Century Code (NDCC) Section 34-01-20 was enacted in 1993. This law provides protection to any employee who in good faith reports a violation or suspected violation of a federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official; who is requested by a public body or official to participate in an investigation, a hearing, or an inquiry; or who refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. A copy of Section 34-01-20 is attached as [Appendix A](#).

This law authorizes an aggrieved employee to file a complaint with the Labor Department; directs the Labor Department to receive complaints of violations of the law; and authorizes the department to attempt to obtain voluntary compliance with the law through informal advice, negotiation, or conciliation.

Additionally, this law expressly authorizes an aggrieved employee to bring a civil action and sets out the types of relief a court may grant. However, the right of an employee to bring a civil action may be limited if the employee's collective bargaining agreement, employment contract, or public employee rights provide a process through which to address the claimed prohibited conduct. Finally, willful violation of this section is an infraction.

Public Employees

North Dakota Century Code Section 34-11.1-04 was enacted in 1985 and is part of the Public Employees Relations Act. This law provides protection to most classes of public employees who report to the agency head, a state's attorney, the Attorney General, or an employee organization the existence of a job-related violation of local, state, or federal law, rule, regulation, or ordinance or the existence of a job-related misuse of public resources. A copy of NDCC Section 34-11.1.04 is attached as [Appendix B](#).

Under the definitions established in NDCC Section 34-11.1-01, an employee covered under NDCC Section 34-11.1-04 is "any person, whether employed, appointed, or under contract, providing services for

the state, county, city, or other political subdivision, for which compensation is paid. 'Employee' also includes a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision." The term does not include a person elected to public office in the state or in a political subdivision, a member of the Legislative Council, a person holding an appointive statutory office, one deputy or principal assistant for each elected official or appointive statutory official, one secretary for each elected or appointive statutory official, and all members of the Governor's staff.

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This law further provides that any employee of the state, except an employee under the jurisdiction of the State Board of Higher Education or the judicial branch, who claims reprisal for filing a report under this law to appeal in the manner prescribed for a classified employee grievance under NDCC Chapter 54-44.3. Under that chapter, an employee may appeal a decision by an agency for a hearing before an administrative law judge appointed by the Director of the Office of Administrative Hearings. An employee may appeal a decision of an administrative law judge to the district court under NDCC Chapter 28-32. Finally, NDCC Section 34-11.1-08 provides violation of any of the provisions of NDCC Chapter 34-11.1 is a Class B misdemeanor.

ADMINISTRATIVE RULES

Office of Management and Budget

The Office of Management and Budget has adopted administrative rules under North Dakota Administrative Code (NDAC) Chapter 4-07-20.1 which address the procedure for an employee to file a grievance against an employee under NDCC Section 34-11.1-04 and has adopted administrative rules under NDAC Chapter 4-07-20.2 which addresses the appeal of a claim of reprisal under NDCC Section 34-11.1-04.

Labor Department

The Labor Department has adopted an administrative rule under NDAC Section 46-01-01-01(2)(b), which provides in part:

The human rights division may mediate, conciliate, or investigate complaints or charges of discrimination in the areas of employment, housing, public services, public accommodations, and credit transactions

based on a person's membership in a protected category as set forth in North Dakota Century Code chapters 14-02.4 and 14-02.5. In addition, the human rights division may receive complaints of retaliation under North Dakota Century Code sections 34-01-20 and 34-11.1-05 and attempt voluntary compliance through informal advice, negotiation, or conciliation.

ATTACH:2