TITLE 34
LABOR AND EMPLOYMENT

CHAPTER 34-01
GENERAL PROVISIONS

34-01-01. Contract of employment defined.

A contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or of a third person.

34-01-02. Personal service contract - Time limit - Continuation of employment.

A contract to render personal service cannot be enforced against the employee beyond the term of two years from the commencement of service under it, but if the employee voluntarily continues the employee's service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

34-01-03. Voluntary service without employment - Duties of person rendering - Rights to compensation and expenses.

One who officiously and without the consent of the real or apparent owner of a thing takes it into possession for the purpose of rendering a service about it must complete such service and use ordinary care, diligence, and reasonable skill about the same. The person is not entitled to any compensation for the person's service or expenses, except that the person may deduct actual and necessary expenses incurred by the person about such service from any profits which the person's service has caused the thing to acquire for its owner and must account to the owner for the residue.

34-01-04. Intimidation, force, and threats against employees prohibited - Penalty.

Every person who, by any use of force, threats, or intimidation, prevents any person employed by another from continuing or performing the person's work or from accepting any new work or employment, and every person who uses any force, threats, or intimidation to induce such hired person to relinquish the person's work or employment or to return any work the person has in hand before it is finished, is guilty of a class B misdemeanor.

34-01-05. Intimidation, force, and threats against employers prohibited - Penalty.

Every person who, by any use of force, threats, or intimidation, prevents another from employing any person, and every person who uses force, threats, or intimidation to compel another to employ any person, or to force or induce another to alter that person's mode of carrying on business, or to limit or increase the number of persons employed by that person, or their rate of wages or time of service, is guilty of a class B misdemeanor.

34-01-06. Hindering person from obtaining or enjoying employment - Penalty.

Every person who maliciously interferes or hinders, in any way, any person from obtaining employment or from enjoying employment already obtained from any other person, is guilty of a class A misdemeanor.

34-01-07. Black list prohibited - Punishment.

Repealed by S.L. 1975, ch. 106, § 673.

34-01-08. Limitation on hours of labor of employees of city over five thousand population - Exceptions.

Repealed by S.L. 1991, ch. 365, § 1.

34-01-09. Violation of hours of employment for city employees - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

34-01-09.1. Maximum hours of labor.
Repealed by S.L. 1991, ch. 365, § 1.

34-01-09.2. Penalty.
Repealed by omission from this code.

34-01-09.3. Qualifications to hold office in labor union or labor organization.
Repealed by omission from this code.

34-01-10. Fraud by employee in securing transportation or advancement - Misdemeanor.
Repealed by S.L. 1975, ch. 106, § 673; 1975, ch. 296, § 1.

34-01-11. Definition.
Repealed by omission from this code.

34-01-12. Employer to pay surviving spouse or heirs wages due.
For the purposes of this section, the word "employer" includes every person, firm, partnership, corporation, limited liability company, the state of North Dakota, and all municipal corporations. If at the time of the death of any person, the person's employer is indebted to the person for work, labor, or services performed, and no executor or administrator of the person's estate has been appointed, such employer, upon the request of the surviving spouse, or, if there is no surviving spouse, then upon the request of the person's next eligible heir or heirs as determined by section 30.1-04-03, forthwith shall pay said indebtedness to the said surviving spouse or heirs. The employer shall require proof of the claimant's or claimants' relationship to the decedent by affidavit and shall require claimant or claimants to acknowledge receipt of such payment in writing. Any payments made by an employer pursuant to the provisions of this section operate as a full and complete discharge of the employer's indebtedness to the extent of such payment, and no employer thereafter may be liable therefor to the decedent's estate or the decedent's executor or administrator thereafter appointed. Any amount so received by a spouse or heirs must be considered in diminution of the allowance provided for by section 30.1-07-02.

34-01-13. Actions under Fair Labor Standards Act must be brought within certain time.
All suits and actions for the recovery of overtime, damages, fees, or penalties accruing under laws respecting the payment of wages, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.], as same has been or may hereafter be amended, and all other similar acts must be brought within two years after the accrual of such claim for relief, and all claims for relief accruing prior to the date hereof must be brought within one year after passage of this section. This section does not affect suits pending at the time of its passage.

34-01-14. Right to work not to be abridged by membership or nonmembership in labor union.
The right of persons to work may not be denied or abridged on account of membership or nonmembership in any labor union or labor organization, and all contracts in negation or abrogation of such rights are hereby declared to be invalid, void, and unenforceable.

34-01-14.1. Collection of actual representation expenses from nonunion employees.
As used in this section, "actual representation expenses" are only those actual expenses which are sustained by a labor union or labor organization in processing any grievance of a nonunion employee. For grievances arising from actions occurring while an employee was a member of a bargaining unit of a management entity with which a labor union or labor organization has a contract, but while that employee was not a member of that union or organization, that labor union or labor organization shall collect actual representation expenses

from that nonunion employee. Actual representation expenses may be assessed only in instances in which a nonunion employee has specifically requested in writing to use representation by the labor union or labor organization. A nonunion employee may not be compelled to pay any expenses incurred by a labor union or labor organization in the course of general contract negotiations or collective bargaining. An assessment under this section is not an abridgement of any rights guaranteed under section 34-01-14. This section does not abridge or in any way interfere with rights guaranteed employees generally under the Labor Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.].

34-01-15. Employer to pay for medical examination - Penalty for violation.

Whenever an employer requires an employee, or prospective employee, to take a medical examination, or furnish any medical records, as a condition of retaining or obtaining employment, the employer shall bear the cost of the examination or the furnishing of the medical records. For purposes of this section, medical examination includes any test for the presence of drugs or alcohol. An employer violating any of the provisions of this section is guilty of an infraction.

34-01-15.1. Paid family leave - Political subdivision prohibition.

1. As used in this section:
   a. "Employee" means an individual employed in this state by an employer.
   b. "Employer" means a person that does business in this state. The term does not include a public employer.
   c. "Paid family leave" includes employment benefits for an employee to take time off work to care for an ill family member or to bond with a new child entering the family.
   d. "Public employer" means the state and each political subdivision of the state.
2. A political subdivision may not adopt or enforce an ordinance that requires an employer to provide to an employee paid family leave that exceeds the requirements of federal or state laws and rules.

34-01-16. Qualifications to hold office in labor union or labor organization.

No person who has been convicted of any crime involving moral turpitude or a felony, excepting traffic violations, may serve in any official capacity or as any officer in any labor union or labor organization in this state. No such person, nor any labor union or labor organization in which the person is an officer, is qualified to act as a bargaining agent or representative for employees in this state. Such disqualification terminates whenever such officer is removed or resigns as an officer in such labor union or labor organization.

34-01-17. Unlawful to discriminate because of age - Penalty.

No person carrying on or conducting within this state any business requiring employees may refuse to hire, employ, or license, or may bar or discharge from employment, any individual solely upon the ground of age; when the reasonable demands of the position do not require an age distinction; and, provided that such individual is well versed in the line of business carried on by such person, and is qualified physically, mentally, and by training and experience to satisfactorily perform the duties assigned to the person or for which the person applies. Nothing herein affects the retirement policy or system of any employer if such policy or system is not merely a subterfuge to evade the purposes of this section. Any person who violates any of the provisions of this section is guilty of a class B misdemeanor.

34-01-18. Discrimination against women jockeys prohibited - Penalty for violation.

Repealed by S.L. 1975, ch. 106, § 673.

34-01-19. Employment discrimination - Declaration of policy - Limitation of actions - Court jurisdiction.

Repealed by S.L. 1983, ch. 173, § 22.

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, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, 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, or federal law, ordinance, rule, 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 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 attorney's 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 and human rights 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 and human rights, a person claiming to be aggrieved by a violation of this section 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 and human rights under this subsection before proceeding under other provisions of this section.