CHAPTER 34-06
MINIMUM WAGES AND HOURS

34-06-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the labor commissioner.
2. "Employee" includes any individual employed by an employer. However, an individual is not an "employee" while engaged in a ridesharing arrangement, as defined in section 8-02-07. The term does not include a person engaged in firefighting or sworn law enforcement officers for a political subdivision of the state.
3. "Employer" includes any individual, partnership, association, corporation, limited liability company, the state and political subdivisions of the state, or any person or group of persons acting in the interest of an employer in relation to an employee.
4. "Minor" means a person of either sex under the age of eighteen years.
5. "Occupation" means a business or industry, or a trade or branch thereof, but it does not include outside salesmen who are compensated on a commission basis.
6. "Wages" includes all payments made to or on behalf of an employee as remuneration for employment, whether calculated on a time, piece, job, or incentive basis.

34-06-02. Power to investigate conditions of labor and wages and hours of employees.

The commissioner has the power to:

1. Investigate and ascertain the wages and the hours and conditions of labor of employees in the different occupations in which they are employed within this state.
2. Inspect and examine, either in person or through authorized representative, all books, payrolls, and other records of any employer of employees appertaining to or bearing on the questions of hours or conditions of labor of any employee employed by such employer.
3. Require from any employer of employees a full and true statement of the wages paid to, and the hours and conditions of labor of, all employees in the employer's employ.

34-06-03. Commissioner may adopt standards by rule.

The commissioner 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.

34-06-03.1. Exemption for companionship services and family home care.

1. Employees who provide companionship services for individuals who, because of age or disability, are unable to care for themselves are exempt from any minimum wage and hour standards that may be prescribed under this chapter, to the extent that those companionship services are provided by an employee from ten p.m. to nine a.m., up to a total of eight hours, during which time the employee is available to perform duties for the aged or disabled individual, but is free to sleep and otherwise engage in normal private pursuits in the aged or disabled individual's home. Employees who provide companionship services are not entitled to any overtime premium that may be prescribed under this chapter.
2. An individual who provides family home care is exempt from any minimum wage and hour standards that may be prescribed under this chapter.

3. An individual who contracts with an elderly or disabled person, or a spouse or relative of an elderly or disabled person as described in subdivision b of subsection 4, to provide room, board, supervisory care, and personal services to that elderly or disabled person is exempt from any minimum wage and hour standards that may be prescribed under this chapter.
4. As used in this section:
   a. "Companionship services" means those services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" do not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and do not include individuals who provide care and protection for infants and young children who are not physically or mentally disabled.
   b. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.

34-06-03.2. Authority of labor commissioner - Exception.

Notwithstanding section 34-06-03, the labor commissioner may not adopt rules relating to sections 23-12-09 through 23-12-11. If the labor commissioner is made aware of a possible violation of chapter 23-12, the commissioner may refer the violation to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.

34-06-04. Power to make rules - Posting by employers.

The commissioner may prepare, adopt, and promulgate rules under chapter 28-32 to implement the various provisions of this chapter. 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.

34-06-04.1. Compensatory time, overtime, and work-period claims.

The state or a political subdivision of the state may provide for compensatory time and for a work period for compensatory time and overtime calculation for its employees if the state or political subdivision complies with the requirements of the Fair Labor Standards Act of 1938, as amended, [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.] and any rules and interpretations adopted by the United States department of labor. The authority provided in this section applies in any proceeding brought after June 30, 2003, with respect to compensatory time or overtime earned regardless of when the work in question was performed.

34-06-05. Employment of employees under certain conditions illegal.

It is unlawful to employ in any occupation within this state:
1. Employees for unreasonably long hours.
2. Employees under surroundings or conditions, sanitary or otherwise, which may be detrimental to their health or morals.
3. Employees for wages which are less than the state minimum wage.
4. Minors for unreasonably low wages.

34-06-05.1. One day of rest in seven - Penalty.

1. An employer may not require an employee to work seven consecutive days in a business that sells merchandise at retail. An employer may not deny an employee at least one period of twenty-four consecutive hours of time off for rest or worship in each seven-day period. The time off must be in addition to the regular periods of rest allowed during each day worked. An employer shall accommodate the religious beliefs and practices of an employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of the employer's business. However, if an employee requests time off to attend one regular worship service a week, an employer may not require the employee to work during that period unless:
   a. Honoring the employee's request would cause the employer substantial economic burdens or would require the imposition of significant burdens on other employees required to work in place of the Sabbath observer; or
   b. The employer has made a reasonable effort to accommodate the employee's request.
2. A violation of this section is a class B misdemeanor. It is an affirmative defense to prosecution under this section that the employee volunteered for work on the seventh consecutive day and the employee executed a written statement so stating. The statement must also contain a provision, signed by the employer or the employer's agent, that the employer did not require such work.
3. This section applies only to an employer in a business that sells merchandise at retail.

34-06-06. Hours of labor for females limited - Exceptions.

Repealed by S.L. 1973, ch. 265, § 1.

34-06-07. Employer to keep register of employees employed - Inspection and examination of register.

Every employer shall keep a register of the names of all employees employed by the employer, and on request shall permit the commissioner or any of the commissioner's authorized representatives to inspect and examine such register.

34-06-08. Investigations and hearings by commissioner - Subpoena, oath, and fees of witnesses.

The commissioner may hold public hearings for the purpose of investigating any of the matters the commissioner is authorized to investigate under the provisions of this chapter. Such hearings must be held at such times and places as the commissioner deems fit. Any person interested in a matter under investigation may appear and testify at any public hearing held thereon. The commissioner or the commissioner's duly authorized representative may subpoena and compel the attendance of any witness at any public hearing or at any session of any conference called and held as provided in this chapter and may administer an oath to any witness who is to testify thereat. A witness subpoenaed by the commissioner or by the commissioner's representative must be paid the same mileage and per diem as are paid to witnesses in civil cases before the district court.

34-06-09. Conference to consider investigation by commissioner - Members, quorum, report.

Repealed by S.L. 2003, ch. 281, § 6.

34-06-10. Recommendations contained in report of conference.

Repealed by S.L. 2003, ch. 281, § 6.

34-06-11. Consideration of report by commissioner - Hearing upon approval.

Repealed by S.L. 2003, ch. 281, § 6.

34-06-12. Order issued by commissioner - Posting.

Repealed by S.L. 2003, ch. 281, § 6.

34-06-13. Investigation of employment of minors - Recommendations and requirements governing.

Repealed by S.L. 2003, ch. 281, § 6.

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 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.

34-06-15. Special license to employ at less than minimum wage.

The commissioner may issue to an employee whose productive capacity for the work to be performed is impaired by physical or mental disability, or to any student or learner enrolled in a career and technical education or related program, a special license authorizing the employment of that licensee at less than the minimum wage. The commissioner may also issue special licenses to community rehabilitation programs for the handicapped which engage in the occupation and responsibility of representing and placing for the purpose of training, learning, or employment of those employees whose productive capacity for the work to be performed is impaired by physical or mental disability. The commissioner shall issue such licenses under rules adopted by the commissioner.

34-06-16. Recovery by underpaid employee.

Repealed by S.L. 1975, ch. 298, § 1.

34-06-17. Investigation of compliance with 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 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.

34-06-18. Employer discriminating against employees.

No employer may discharge or in any other manner discriminate against any employee because such employee has testified or is about to testify, or because such employer believes that the employee may testify, in any investigation or proceeding under or relative to this chapter.

34-06-19. Penalty for violation of chapter.

Any person who violates any of the provisions of this chapter, or any rule issued pursuant thereto, is guilty of a class B misdemeanor.

34-06-20. Biennial report.

The commissioner shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

34-06-21. Hours of labor for females during war.

Repealed by omission from this code.

34-06-22. State minimum wage rate.

1. Except as otherwise provided under this chapter and rules adopted by the commissioner, every employer shall pay to each of the employer's employees:
   a. Effective July 24, 2007, a wage of at least five dollars and eighty-five cents per hour;
   b. Effective July 24, 2008, a wage of at least six dollars and fifty-five cents per hour; and
   c. Effective July 24, 2009, a wage of at least seven dollars and twenty-five cents per hour.
2. This section does not limit the authority of the commissioner to adopt rules establishing a state minimum wage rate that differs from the rates established under subsection 1.

34-06-23. Living wage mandate prohibition - Political subdivisions.

1. As used in this section:
   a. "Employ" has the same meaning as provided under section 34-06.1-02.
   b. "Employer" includes a person acting directly or indirectly in the interest of an employer in relation to an employee. The term may include a public agency, other than the federal government, and an employer that has a contract or subcontract with a political subdivision or that has received tax abatements, loan guarantees, or other financial assistance from the political subdivision.
   c. "Living wage mandate" means a requirement enacted by a political subdivision which requires an employer to pay any or all of the employees of the employer a wage rate not otherwise required under the law of this state or federal law.
   d. "Political subdivision" includes a city, county, township, school district, or any other local government of this state.
2. A political subdivision may not enact, maintain, or enforce by charter, ordinance, purchase agreement, contract, regulation, rule, or resolution a living wage mandate in an amount greater than the applicable minimum wage rate of this state.